

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:) BK. NO: 08-30331-SGJ-7
)
JAMES EUGENE RIGGERT)
D E B T O R)

ADV. NO: 08-3165

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TRANSCRIPT OF PROCEEDINGS

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BE IT REMEMBERD, that on the 20th day of May, 2009,
before the HONORABLE STACEY G. JERNIGAN, united States
Bankruptcy Judge at Dallas, Texas, the above styled and
numbered cause came on for hearing, and the following
constitutes the transcript of such proceedings as hereinafter
set forth:

1 A P P E A R A N C E S

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5 BY: Ms. Molly Bartholow

6 APPEARING ON BEHALF OF THE DEBTOR

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11 APPEARING ON BEHALF OF THE CADLE COMPANY

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1 P R O C E E D I N G S

2 THE COURT: All right. The Court is ready to
3 begin the trial in the Cadle Company v. Riggert, adversary
4 08-3165.

5 Let's start by getting appearances from counsel.

6 MR. LAUN: Ernest Laun for the plaintiff, Your
7 Honor.

8 THE COURT: Good morning.

9 MS. BARTHLOW: Molly Bartholow for
10 Mr. Riggert.

11 THE COURT: Good morning.

12 MS. BARTHLOW: Your Honor, one -- probably
13 good news for you. The Riggert's daughter has a school
14 function at 2:00 that they would like to attend. We're going
15 to make an effort to try to complete today before 2:00,
16 preferably by 1:30 at the latest.

17 I've spoken with Mr. Laun. We both have requested
18 attorney's fees. And what I think we've agreed to do is
19 allow the Court to rule on merits and then whoever is the
20 successful party will exchange affidavits --

21 THE COURT: Okay.

22 MS. BARTHLOW: -- and briefs on the ability
23 to get attorney's fees and what they are. And try to work
24 those out.

25 THE COURT: Okay. Very good.

1 THE COURT: Are we going to have just two
2 witnesses today or --

3 MR. LAUN: I'm calling one witness, Your
4 Honor.

5 THE COURT: There's one other person.

6 MR. LAUN: But I'm just calling Mr. Riggert.

7 THE COURT: Oh, okay. Okay. Well, that
8 certainly seems achievable, then.

9 MS. BARTHOLOW: I think so.

10 THE COURT: We'll do everything we can to
11 speed it along.

12 MS. BARTHOLOW: Move it right along.

13 THE COURT: All right. Mr. Laun, any
14 housekeeping matters or comments about that?

15 MR. LAUN: As a preliminary matter, we did
16 file our exhibits timely and there were no objections timely
17 filed. So we would move to admit Plaintiff's Exhibits 1
18 through 24.

19 THE COURT: Okay. Is that the blue notebook I
20 have up here?

21 MR. LAUN: Yes, Your Honor.

22 THE COURT: All right. Ms. Bartholow, any
23 objection with that?

24 MS. BARTHOLOW: Well, I do, Your Honor, because
25 Mr. Savet is not here for me to cross-examine. I thought he

1 would be here. He did have his affidavit, but I thought he
2 was going to be here for me to cross-examine.

3 THE COURT: All right. Well, let's see. We
4 have our rule under our scheduling order that objections to
5 exhibits are due, what is it, seven days before trial docket
6 call, or they are deemed waived except with respect to
7 objections as to relevance or privilege, for that matter.
8 So, Ms. Bartholow, what do you have to say about that? I
9 didn't see an objection on file as to these exhibits.

10 MS. BARTHLOW: Your Honor, perhaps I
11 misunderstood. Again, the documents, not the problem if I
12 have a witness to cross-examine. And it wasn't apparent to
13 me that I would have no opportunity to cross-examine
14 Mr. Savet. What I -- what I thought I was required to object
15 to were the statements in the affidavit, not my ability to
16 cross-examine on the statements or the authenticity of the
17 documents he had attached to his affidavit. If I was
18 mistaken, I was mistaken.

19 I do need to make this a learning process. So if it is
20 the Court's intent that if I choose not to object to the
21 affidavit itself I must subpoena the witness to
22 cross-examine, then I need to just make this a learning
23 process and learn that. But that wasn't evident to me.

24 THE COURT: I'm going to double check the
25 exact wording of our scheduling order.

1 MS. BARTHOLOW: Your Honor, we had a special
2 order the Court entered.

3 THE COURT: Okay. You all did your own
4 scheduling order?

5 MR. LAUN: The Court entered one on February
6 24th, Your Honor, which contained the directive that
7 objections to exhibits shall be filed no later than March
8 13th. The exhibit that's complained of is a business record
9 affidavit that certainly could have been complained of.

10 THE COURT: Okay. So you're saying you have
11 P-18 here which was the affidavit of the Cadle representative
12 with regard to all of these other documents.

13 MR. LAUN: It authenticates Exhibits 19
14 through 21.

15 THE COURT: Okay. The agreed judgment, the
16 assignment of judgment, okay. I got you. Okay. Let me look
17 at our scheduling order.

18 All objections to exhibits shall be filed no later than
19 March 13th. Okay.

20 All right. That's what I thought. I think our
21 standard form of scheduling order that we default to in
22 adversaries in this District is a little clearer on the point
23 than the February scheduling order that the parties
24 submitted. It explicitly says -- our standard default form
25 of scheduling order in this District explicitly says, All

1 exhibits not objected to in writing by docket call shall be
2 admitted into evidence at trial with out further proof,
3 except for objections to relevance. So, again, the standard
4 form of scheduling order we default to I think makes clear
5 that he wouldn't have to have a witness to prove up and get
6 into evidence the documentary evidence. However, he would be
7 at risk still of a relevance objection. And, you know,
8 without a witness to show the relevance or compelling
9 argument, it might be kept out of evidence if the relevance
10 objection was sustained. So --

11 MS. BARTHOLOW: May I make an additional
12 objection?

13 THE COURT: You may.

14 MS. BARTHOLOW: Thank you, Your Honor. It
15 will take just a moment to turn to the affidavit.

16 Okay. The affidavit is item 18, Exhibit 18.

17 THE COURT: Okay.

18 MS. BARTHOLOW: And then attached separately
19 behind there are a number of documents. Now, I want to
20 preserve the objection because they are not specifically
21 designated as the documents that are being referred to in the
22 affidavit. We had previous objection because there was no
23 authentication, in my opinion, as to the documents that were
24 referred to. And I requested that they get some. Well,
25 instead what they did was they separately listed each one of

1 the documents, but provided no additional authentication than
2 the affidavit that they originally put in.

3 So, again, what we have is Number 18 with no documents
4 attached. Then we have 19, 20, 21, 22, 23, 24, whatever
5 documents that are -- there's no real connection between the
6 affidavit itself and the document attached. And so if we're
7 going to admit one and admit the others, I understand that.
8 But I don't think we can say the affidavit, in fact, includes
9 these other documents. There's just an affidavit of Nate
10 Savet.

11 THE COURT: All right. Understood.

12 Mr. Laun, is it your representation as Cadle's counsel
13 that items Number 19, 20, and 21 are, in fact, the items that
14 are referred to in this affidavit?

15 MR. LAUN: Yes, Your Honor.

16 THE COURT: And you have just separated them
17 out, or what?

18 MR. LAUN: The reason I separated them out is
19 at the hearing that was held that resulted in the February
20 24th order on the motions and the resetting the trial, I was
21 specifically chastised by counsel that she did not understand
22 which -- that I needed to separately identify each and every
23 exhibit. We have painstakingly done that. Each item is
24 separated listed and described and each item is tabbed and
25 marked with a specific exhibit number. We've gone to

1 extraordinary lengths to describe exactly what the exhibits
2 are. And these -- that's why we separated them out, because
3 I thought I was under a directive in this order that shall be
4 so detailed -- I should describe each exhibit to be offered
5 into evidence. Now, the business record affidavit is a
6 standard affidavit used in federal court. Typically
7 everybody knows you have to file a written objection to a
8 business record affidavit if you think that there's some
9 defect in them. There was no objection filed. And I really
10 don't think this is material in as much as the debt that's
11 described in Exhibit 18, 19, 20, and 21 is the same debt
12 that's listed by the debtor on the schedules and not marked
13 contingent, unliquidated, or disputed. So the idea that
14 we're having a dispute about whether or not a debt exists and
15 is owned by the Cadle Company when the defendant himself has
16 admitted it in the schedules under penalty of perjury doesn't
17 seem like we're focused on what the issue is. And I don't
18 think there's any basis for an objection to exclude the
19 business record affidavit, Your Honor.

20 THE COURT: Okay. I do overrule the objection
21 and I am going to admit Exhibits 1 through 24 here today,
22 Cadle Plaintiff's Exhibits 1 through 24.

23 All right. Any other housekeeping matters before we
24 begin the trial?

25 MS. BARTHOLOW: Your Honor, I guess we would

1 also request that our Exhibit D-A through D-F also be
2 admitted as no objection, since none were previously raised.

3 May I approach?

4 THE COURT: You may.

5 Mr. Laun?

6 MR. LAUN: No, I did not file an objection and
7 have no objection to the admission, Your Honor.

8 THE COURT: All right. Exhibits D-A through
9 D-F will likewise be admitted.

10 MS. BARTHOLOW: I will represent to the Court
11 that Exhibit D-B is the docket sheet for the case, the main
12 case and that I have not specifically labeled any document
13 D-C.

14 THE COURT: Okay. So there is no D-C. And
15 I'm sorry, which -- you said D-B or D-D?

16 MS. BARTHOLOW: Yes. D-B as in boy is the
17 docket sheet. My general statement of what D-B would be is
18 any document or pleading filed in the adversary or main case.

19 THE COURT: Okay.

20 MS. BARTHOLOW: And what I've done is -- I'm
21 basically asking the Court to take judicial notice of the
22 docket sheet in the main case.

23 THE COURT: Okay. Any comment from you,
24 Mr. Laun, on that?

25 MR. LAUN: No, Your Honor. No problem.

1 THE COURT: Okay. The Court will so take
2 judicial notice.

3 All right. I will take opening statements at this
4 time.

5 Mr. Laun, you may make your's first.

6 MR. LAUN: May it please the Court. The Court
7 is well versed in matters of objections to discharge. We're
8 limiting our objection today at this trial to 727(a)(4) and
9 727(a)(2)(A).

10 THE COURT: All right.

11 MR. LAUN: What I've got to prove today is
12 that Mr. Riggert made a statement under oath. The statement
13 was false. He knew it was false at the time he made it. It
14 was done with a fraudulent intent to deceive. And the
15 statement related to the materiality of the bankruptcy case.

16 With respect to the 727(a)(2)(A) claims, I have to
17 prove a transfer or concealment of property belonging to the
18 debtor within one year of the filing with the intent to
19 hinder, delay, or defraud the creditors of the estate.

20 Your Honor, we believe the evidence will show that.

21 THE COURT: Thank you, Mr. Laun.

22 Ms. Bartholow.

23 MS. BARTHLOW: As Mr. Laun stated and during
24 our preparation for the hearing today it is -- it is apparent
25 that you've written a number of opinions on Cadle Company

1 motions to object to discharge, whether it's 523 or 727. So
2 I know the Court is aware. Of particular interest to me was
3 the Hughes case in 2006 where you discussed an issue that I
4 think is similar to what we have here. In one of the prior
5 hearings the Court asked us to focus on materiality. And in
6 that regard on page A-11 and A-12 of your Hughes decision,
7 which is 354 B.R. 801 and then 811 and 812, you focused on
8 the elements of (a)(4)(A), 727(a)(4)(A). And materiality is
9 one of the elements.

10 What is interesting about materiality is that it's not
11 necessarily the amount of the claim in question or the item
12 in question that's relevant, but question of whether the
13 subject matter or the false oath bears a relationship to the
14 debtor's business transactions or estate, or concerning the
15 discovery of assets, business dealings, or the existence and
16 disposition of this property.

17 I would also point the Court to the 5th Circuit's
18 opinion in Pratt, which is at 411 F.3d 561. Pratt is another
19 case that also discusses all of these issues, picks up the
20 same language, and eventually ruled that the alleged
21 non-disclosure in the Pratt case dealt with children's trust.
22 And the Court said, Nevertheless, we conclude that Pratt's
23 failure to list his Trustee status, assuming it got decided
24 it was required, is not material because this knowledge would
25 not assist Pratt's creditors. And I think that's the crux of

1 what the Court is going to decide here today.

2 It's the position of Mr. and Mrs. Riggert that, number
3 one, this particular plaintiff was fully aware of all of the
4 intricate details of the refinancing of their home. No
5 question they refinanced their home at the end of June, early
6 July. Countrywide is the new lender. We don't dispute that.
7 I don't think it's disputed that Mrs. Riggert took out that
8 loan. I don't think it's disputed that monies were paid by
9 Countrywide to Ms. Riggert.

10 So having said all of that, the question is, was there
11 a transfer, A, of anything belonging to Mr. Riggert? And
12 it's our position that what occurred there was Mrs. Riggert
13 took some of her property interest in that property out.
14 Mr. Riggert's position, vis-a-vis the home, was exactly the
15 same before and after this financing. That there was no
16 transfer of his interest in the property. In fact, as a
17 result of the agreement between the parties, he gets the
18 first 68,000 of equity out of the house.

19 So we're saying Mr. Riggert's interest was unaffected
20 by the agreement between the parties and his creditors were
21 not affected at all. Because we're talking about a
22 homestead. And part of the reason for introducing the docket
23 sheet is for the Court to take notice that nobody has
24 objected to the homestead exemption of the home. So one of
25 the things that I think we can all agree on is their home is

1 their homestead. It was at the time they refinanced. It is
2 now.

3 So I don't get why this is something that, A, needed to
4 be disclosed on the schedules. And, B, wasn't sufficiently
5 disclosed. And, C, was material. So we -- we will tell the
6 Court the word "the agreement" and the description of the
7 agreement between the parties isn't on the schedules. We
8 will admit to that. But the transaction itself was.

9 The schedules are going to show that we listed the
10 home. We listed the home subject to a lien. We listed the
11 debt. Countrywide is on there with a secured claim for the
12 amount of the refinanced amount in June. We listed in the
13 statement of affairs the fact that Cadle Company got \$5,000
14 out of that at closing. So the transaction itself, I think,
15 is adequately disclosed. The issue then becomes whether the
16 agreement between the parties is a material thing that should
17 have been disclosed, or was something that is required to be
18 disclosed at all.

19 And the other fact that I want the Court to be fully
20 aware of were the efforts by the debtor to keep the Cadle
21 Company informed of what was going on. I think it will be
22 undisputed, has been undisputed today that the Cadle Company
23 got \$5,000 out of the refinancing. So they definitely knew
24 about the refinancing. They were on -- we're going to show
25 they were on the closing statement, Received the money. No

1 question about it. No question but Mr. Riggert had his
2 deposition taken by Cadle Company shortly after that
3 transaction and that the transaction was discussed fully.

4 Also, there's no dispute that the Cadle Company was
5 given a copy of the agreement when it was filed of record.
6 That I don't think is disputed either. I believe the
7 testimony will show that they got a copy of the agreement in
8 about November. This case wasn't filed until January. So
9 the Cadle Company knew of the agreement from November to
10 January and didn't do anything.

11 At the 341 Meeting the Cadle Company appeared and
12 questioned Mr. Riggert about both the agreement and the
13 refinancing. It was discussed, it wasn't not disclosed. It
14 was disclosed and it was discussed.

15 I think we're very surprised at the position that the
16 Cadle Company is taking because there was an extra effort
17 with regard to them to keep them informed of what occurred.
18 They knew that they had gotten the closing documents from the
19 title company from the refinancing. They knew that the money
20 from the closing of the refinancing went to Mrs. Riggert, did
21 not go to Mr. Riggert. Went to her. I think it's undisputed
22 that she doesn't owe the Cadle Company anything. Our
23 argument is also Mr. Riggert doesn't owe the Cadle Company.
24 But we'll get into those specifics I think at closing.

25 But even if they owed -- Mr. Riggert owed something to

1 the Cadle Company, Mrs. Riggert didn't. And so at the end,
2 it's not material that she got some of the equity out of the
3 exempt home, because it wasn't available for his creditors.

4 The Northern District has taken a couple of
5 opportunities to talk about sole community and separate
6 property of the non-filing spouse. It came up in Judge
7 Houser's opinion in Trammel. And I'll give the Court that
8 citation a little later. And also Judge Lynn had an
9 opportunity to talk about it in the Nayhat case. And that
10 was prior to the current Bankruptcy Code. But the concept of
11 Texas law overlay on bankruptcy and the fact that there are
12 rights of the non-filing spouse that are separate and apart
13 from the rights of the debtor are pretty evident.

14 The Trammel case is particularly interesting because in
15 that case a car creditor was trying to get permission to
16 foreclose on a vehicle. In this case the spouse was the wife
17 that filed. The husband had bought the car. He had signed
18 all of the documents. He signed the security agreement. But
19 the wife was driving the car every day. His testimony he
20 bought the car for her. And, yet, Judge Houser ruled that
21 the vehicle itself wasn't property of the estate because it
22 wasn't under the wife's sole management and control. And
23 that was the ruling of the Court. So the Court ruled there
24 was no stay to lift because this vehicle was property of the
25 husband who didn't file and it's under his sole management

1 and control regardless of the use of the car by the wife. So
2 you don't need to lift the stay, go foreclose on the car.

3 To me that's a very extreme case, but it is a reported
4 decision of this District. And if it just emphasizes there
5 are distinct stays. And if a spouse is property owner, their
6 sole management is not property of the estate then clearly
7 whether -- if there needs to be a detailed explanation in the
8 schedules beyond what we've already done. Nobody is trying
9 to hide the fact that there is a refinancing or the value of
10 it.

11 So I think that's where we're headed today. Again, we
12 will try to move promptly so we can finish early.

13 THE COURT: All right. Thank you.

14 Mr. Laun, you may call your first witness.

15 MR. LAUN: James Riggert.

16 THE COURT: All right. Mr. Riggert, if you
17 could come up before our court reporter first, she's going to
18 swear you in. And then after she swears you in, you'll take
19 the witness stand over there.

20 (The witness was sworn by the courtroom deputy.)

21 MR. LAUN: Your Honor, may I approach the
22 witness with the exhibit binder?

23 THE COURT: You may.

24

25 (no omission)

1 JAMES RIGGERT

2 The witness, having been duly sworn to tell the truth,
3 testified on his oath as follows:

4 DIRECT EXAMINATION

5 BY MR. LAUN:

6 Q. Would you state your name, please?

7 A. James Riggert.

8 Q. Are you one in the same James Eugene Riggert who
9 filed bankruptcy on January 31, 2008?

10 A. Yes, sir.

11 Q. All right. And you're the defendant in this
12 adversary proceeding?

13 A. Yes, sir.

14 Q. Would you mind turning to Exhibit Number 7 in the
15 exhibit volume?

16 A. Yes, sir.

17 Q. This Schedule A of real property, that's true and
18 correct?

19 A. Homestead 6622 Northport, Dallas, Texas, fee
20 simple. Yes.

21 Q. All right. And that was true and correct on the
22 day you filed and today?

23 A. Yes.

24 Q. Let me direct your attention to Exhibit 8.

25 Would you take a moment to look at those schedules, the

1 Schedule 8 and tell me if those schedules were true and
2 correct on the date that you filed?

3 A. The only comment that I have, Mr. Laun, is that
4 item 25, automobiles, trucks, trailers, and other vehicles
5 and accessories --

6 Q. Yes.

7 A. It mentions my Jeep Grand Cherokee Laredo and then
8 it says 6622 Northport. And under item 31, animals, it says
9 two pets and then it says my home address.

10 Q. Okay. Is there something wrong with that?

11 A. Just don't want my homestead to be referred to as
12 animals or be misconstrued that my Jeep is my -- or my
13 homestead is also an automobile.

14 Q. I trust we all understand that.

15 Let me ask you to direct your attention to Exhibit 1
16 now.

17 Exhibit 8, the Schedule B of personal property, other
18 than the comment that you made, it's true and correct?

19 A. I'm sorry, Mr. Laun, I'm not there yet.

20 Q. I'm sorry.

21 A. Yes, sir. Ask the question again.

22 Q. Okay. Exhibit 8, that's Schedule B. That's true
23 and correct on the date you filed and it's true and correct
24 today? Item number 8, I'm sorry, I'm confusing you.

25 MS. BARTHOLOW: Your Honor, as to Exhibit 8, I

1 think this is asked and answered already.

2 THE COURT: I will sustain. He pointed out
3 the address and clarification about that.

4 MR. LAUN: All right. I apologize.

5 Q. Let me ask you to turn to Exhibit 1 now.

6 And what is Exhibit 1?

7 A. Homestead refinancing agreement.

8 Q. And is that your signature on page 3 of the
9 agreement?

10 A. Yes, sir.

11 Q. You recognize your spouse's signature?

12 A. Yes, sir.

13 Q. All right. And what was the purpose of this
14 homestead refinancing agreement?

15 A. To clarify in writing what our agreement was on the
16 refinancing of the house with the proceeds being my wife's
17 sole and separate property.

18 Q. Was there some doubt about that prior to executing
19 the agreement?

20 A. Just wanted to make it in the deed records.

21 Q. Doesn't the agreement also provide that you're to
22 be reimbursed a certain sum of money?

23 A. No, sir.

24 Q. It doesn't provide that?

25 A. It talks about reimbursement if there's a

1 deficiency or if there are payments made by me.

2 Q. So you do get some money out of this agreement
3 under certain contingencies?

4 Well, let me direct your attention to paragraph 4 on
5 page 2.

6 A. Yes, sir.

7 Q. The first sentence says that you will receive
8 65,864 from the gross sales proceeds of a sale of the
9 property?

10 A. It says in the event the gross sales proceeds from
11 the sale are not sufficient to pay the husband, the 65,864.49
12 specified in paragraph 3(iii), above any deficiency shall be
13 deemed to constitute an unsecured loan from husband from his
14 sole and separate property.

15 Q. Okay. And such loan shall be repaid by wife, does
16 it go on and say that?

17 A. In the event?

18 Q. Yes, that's correct.

19 A. Let me see.

20 I would call that a contingent liability of your wife.
21 I'd say it's in the event of, a hypothetical when. In the
22 event that there would be a deficiency.

23 Q. Your wife is going to pay you a certain sum of
24 money?

25 A. Yes, in the event.

1 Q. So this is a promise by your wife to pay you
2 \$65,000 in the event certain contingencies occur?

3 A. In the event the gross sales proceeds from a sale
4 are not sufficient to pay.

5 Q. All right. Did you consider this an account
6 receivable?

7 A. No.

8 Q. Okay. Let me ask you to direct your attention to
9 Exhibit 8 again, question number 18.

10 A. Yes, sir.

11 Q. Did you have any other liquidated debts owed to
12 you, give particulars?

13 A. No.

14 Q. So your wife's \$65,000 debt to you was not listed
15 in response to question 18?

16 A. It's not -- there was no signed document as a
17 promissory note.

18 Q. You don't consider Exhibit 1, the home financing
19 agreement, a promise to pay you \$65,000?

20 A. No, sir.

21 Q. So is Exhibit A -- is Exhibit 1 unenforceable
22 against your wife with respect to the 65,000?

23 A. I'm not an attorney, Mr. Laun. I'd have to ask my
24 counsel about that.

25 Q. Did you intend the document, Exhibit 1, to be

1 enforceable against your wife and your wife to enforce it
2 against you?

3 A. Restate that, please.

4 Q. Did you intend Exhibit 1 to be enforceable against
5 yourself and enforceable against your wife?

6 A. The lawyer who drafted this put that language in
7 there. Our intent was to identify the separate property from
8 the proceeds.

9 Q. So you don't really consider the agreement stated
10 in paragraph 4 of Exhibit 1 to be enforceable against your
11 wife?

12 A. I'd have to ask a lawyer about that.

13 Q. You're a real estate agent?

14 A. Yes, sir.

15 Q. And you have a license from the Texas Real Estate
16 Commission?

17 A. Yes, sir.

18 Q. You've had some training in contracts; have you
19 not?

20 A. I do have to take some, but when I fill out a
21 contract of sale, Mr. Laun, it clearly states in the contract
22 that I am not a lawyer and I'm not giving anybody legal
23 advice. In fact, I'm prohibited from giving anybody legal
24 advice.

25 Q. You've signed a mortgage before, haven't you, a

1 promissory note?

2 A. Yes, sir.

3 Q. Is that a promise to pay, or is that a legal
4 question?

5 A. I'd have to have my attorney review the documents.

6 Q. All right. Let me direct your attention to number
7 21 on Schedule B, that would be Exhibit 8. Other contingent
8 and unliquidated claims of every nature, counterclaims of the
9 debtor, and rights to setoff, give estimated value of each.

10 Did you include in response to question 21 the
11 existence of a homestead refinancing agreement?

12 A. Once second, Mr. Laun. I'm sort of lost where
13 you're taking me.

14 Q. Oh, I'm sorry. Number 21 under Exhibit 8.

15 A. Let me get back to Exhibit 8. I was on Exhibit 21.

16 Q. Oh, I'm sorry.

17 A. I'm sorry, again, would you please repeat the
18 question?

19 Q. With response -- your response to question number
20 21 on Exhibit 8, did you include the homestead refinancing
21 agreement on a claim that you had against Mrs. Riggert?

22 A. No.

23 Q. No. Why didn't you?

24 A. I'd look at that agreement between my spouse and
25 myself on an exempt asset.

1 Q. Did you have the assistance of counsel when you
2 completed the schedules?

3 A. Yes, sir.

4 Q. And you took the advice of counsel in the
5 completion of the schedules?

6 A. I'm not sure what you're asking me, Mr. Laun.

7 Q. Well, let me ask you to turn to number 35 on
8 Exhibit 8.

9 Other personal property of any kind not already listed,
10 itemize. And you put down, non-filing spouse's property
11 under sole management and control and separate property is
12 not listed.

13 A. Okay.

14 Q. Okay. Do you have a claim against your wife for
15 \$65,000 under the homestead refinancing agreement?

16 A. Mr. Laun, I think you're trying to focus on the
17 wrong issue on the home refinancing agreement.

18 Q. Did you list anything about the debt your wife owed
19 you under the home refinancing agreement in response to
20 question 35 on Exhibit 8?

21 A. I consider the home refinancing agreement to set
22 aside -- to set around what our agreement was on the proceeds
23 of the refinance. That's her sole, separate property.

24 Q. In your claim for reimbursement of the 65,000, is
25 that a claim that you own under the agreement?

1 A. Mr. Laun, it says in the event.

2 Q. So it's a contingent claim?

3 A. I'm not sure I know what that means.

4 Q. Okay. Let me ask you to direct your attention to
5 Exhibit 9.

6 The fourth entry on Schedule F states, Cadle Company.

7 Could you read that to yourself?

8 A. I'm sorry, do you want me to read it out loud?

9 Q. No, just to yourself. I just want you to get
10 familiar with it.

11 A. Yes, sir.

12 Q. Is Exhibit 9 true and correct?

13 A. Yes.

14 Q. Was it true and correct on the day you filed?

15 A. Yes.

16 Q. Is it true and correct today?

17 A. Yes.

18 Q. Would you make any changes to Exhibit 9?

19 MS. BARTHOLOW: Your Honor, I'm going to
20 object to the extent that he's asking for a legal conclusion
21 as to the ownership by Cadle of a judgment. That's a
22 different issue as to what his understanding of what Cadle
23 had.

24 THE COURT: Response?

25 MR. LAUN: Your Honor, I think the exhibit

1 speaks for itself. When a debtor comes forward to seek
2 relief from the Bankruptcy Court, it's incumbent that they
3 truly list all of their assets and liabilities.

4 MS. BARTHOLOW: Your Honor, in that case I
5 believe he's answered and the document speaks for itself. It
6 says what it says.

7 THE COURT: Sustained.

8 Q. Did you -- do you dispute that you owe money to the
9 Cadle Company?

10 A. I wish I would have a lot sooner.

11 Q. I'm asking you today.

12 A. That's why we're here, Mr. Laun.

13 Q. On the day you filed, January 31 of '08, did you
14 dispute that you owed any money to the Cadle Company?

15 A. It's listed on Schedule F --

16 Q. As a creditor of your's?

17 A. Holding unsecured, non-priority claims.

18 Q. Did you check the box that it was disputed?

19 A. No, sir.

20 Q. Did you check that it was contingent?

21 A. No, sir.

22 Q. Did you check that it was unliquidated?

23 A. No, sir.

24 Q. Do you have any basis for not believing that you
25 owe the money to the Cadle Company specified in your sworn

1 Schedule B -- I'm sorry, Schedule F that's contained in
2 Plaintiff's Exhibit 9?

3 A. Mr. Laun, I think we're going over this over and
4 over. It's -- am I -- have I not answered your question
5 directly and properly?

6 Q. No.

7 A. I feel like you're harassing me a bit.

8 THE COURT: Okay. I'm going to instruct you
9 just to answer the question. He asked you if you dispute the
10 claim to Cadle, essentially.

11 THE WITNESS: No.

12 Q. Okay. Let me ask you to turn to Exhibit 10.

13 The third question on Exhibit 10 asked you to list all
14 payments to any creditors made within 90 days.

15 A. Yes, sir.

16 Q. Is the answer that you gave to question 3 on
17 Exhibit 10 true and correct?

18 A. Yes, sir.

19 Q. Of course, those payments were made in excess of 90
20 days, weren't they?

21 A. I think the -- let's see, November 13th was within
22 90 days of the -- June 30th was beyond 90 days.

23 Q. All right. And you -- those payments were made on
24 a debt that you owed to the Cadle Company?

25 A. The \$5,000 was payment for a partial release for

1 the refinancing and the 8,762 was garnishment of my bank
2 account by the Cadle Company.

3 Q. Let me ask you about that garnishment.

4 Didn't that garnishment occur in August of '07?

5 A. Yes, sir.

6 Q. And that's -- that was a garnishment of Merrill
7 Lynch, I believe?

8 A. Yes, sir.

9 Q. And that was done after the closing of the
10 refinance of your home that's described in Exhibit 1, isn't
11 it?

12 A. Yes, sir.

13 Q. All right. And you went and signed this home
14 refinancing agreement on September the 4th?

15 A. Yes, sir.

16 Q. So it wasn't your motivation to have this home
17 financing agreement drawn up to try to exclude the \$65,000
18 from the reach of the Cadle Company?

19 A. No, sir. The \$65,000 was my wife's sole property
20 out of the refinance.

21 Q. And you didn't fear that the Cadle Company might
22 discover it and garnish it?

23 A. I think we disclosed it to you immediately.

24 Q. When did you do that?

25 A. I think after it was filed, we sent that to you.

1 Q. Oh, you mean after the bankruptcy?

2 A. Before.

3 Q. Oh, after you filed the home refinancing agreement?

4 A. Yes, sir.

5 Q. Okay. But I'm talking about your motivation for
6 filing, for signing a home refinancing agreement.

7 Didn't it have something to do with the garnishment
8 that took place in August of '07 by the Cadle Company?

9 A. No, sir.

10 Q. Didn't you have \$65,000 after the closing on June
11 29th of '07?

12 A. No, sir.

13 Q. Where did it go?

14 A. That's my wife's money.

15 Q. Okay. That's pursuant to the home refinancing
16 agreement?

17 A. No. That's pursuant to the facts.

18 Q. Let me ask you to turn to Exhibit 10, question
19 number 3(c).

20 Did you list Mrs. Riggert in response to question 3(c)?

21 A. No, sir.

22 Q. Did she receive a transfer of \$65,000 June 29th of
23 2007?

24 A. This asks any payments that I made within one year
25 immediately preceding the commencement of the case. I didn't

1 pay my wife \$65,000, Mr. Laun.

2 Q. There was a home refinancing agreement in which you
3 would have been able to get 65,000 out of it, right?

4 A. I'm not sure I understand your question, Mr. Laun.

5 Q. The \$65,000 that your wife has promised in the home
6 refinancing agreement to pay you back, why does she owe that
7 to you?

8 A. She does not owe me \$65,000. My -- my equity is
9 still in the home. She refinance and got her equity out at
10 the time.

11 Q. So this was a way of jockeying around the equity in
12 the home?

13 A. Question 3(c)? All debtors list all payments made
14 within one year immediately preceding the commencement of
15 this case for the benefit of creditors who are insiders.

16 My wife is not a debtor.

17 Q. She's an insider, isn't she?

18 A. I guess you're right.

19 Q. Let me ask you to turn to the next page, item
20 number 10, other transfers.

21 Did you list any --

22 A. I'm sorry, Mr. Laun, I'm not sure where I'm
23 supposed to be.

24 Q. Exhibit 10 and it's question number 10.

25 A. Okay.

1 Q. Did you transfer any property within two years
2 prior to -- the two years prior to filing your bankruptcy?

3 A. No, sir.

4 Q. You didn't transfer your equity in the homestead to
5 your spouse in the amount of \$65,000?

6 A. No, sir.

7 Q. She wound up with \$65,000, didn't she, at closing,
8 and didn't she have a home refinancing agreement that set
9 that aside to her?

10 A. She received \$65,000 from the refinance. But she
11 was the person -- the only person that took out the loan.
12 She's the only person that got the proceeds directly into her
13 account.

14 Q. But that 65,000 is going to come back to you under
15 certain circumstances, whenever the house sold, right?

16 A. No, sir. My \$65,000 is the first money out, not
17 her's.

18 Q. Doesn't paragraph 4 of Exhibit 1 say that she is
19 going to pay you \$65,000 if there's not sufficient money in
20 the sale of the house? In fact, she's going to pay it at 6
21 percent interest in 120 equal monthly installments?

22 A. Mr. Laun, there are several contingencies in the
23 home refinance agreement.

24 Q. I was focused on paragraph 4.

25 A. And in the event of.

1 Q. Let me ask you to turn to the next page which is
2 paragraph 16, or question number 16 that's on Exhibit 10.

3 A. Yes, sir.

4 Q. You reside in the State of Texas?

5 A. Yes.

6 Q. You've resided in Texas at least for the eight
7 years preceding the commencement of this bankruptcy case?

8 A. Yes, sir.

9 Q. You checked none on that question 16.
10 You're not making a representation that you're not
11 married to Mrs. Riggert, are you?

12 MS. BARTHOLOW: Excuse me, Mr. Laun, I'm lost.
13 Which document are you looking at now?

14 MR. LAUN: Exhibit 10, and it's question 16.

15 MS. BARTHOLOW: I apologize.

16 A. Okay. Please restate your question.

17 Q. Is your answer to number 16 correct today?

18 THE WITNESS: Molly, can you help me on that
19 one?

20 THE COURT: What was your comment?

21 THE WITNESS: I was just asking for Molly if
22 she could help me on that one.

23 THE COURT: She can't. You have to give your
24 answers.

25 THE WITNESS: Okay. Let me read the spouses

1 and former spouses.

2 I'm still married.

3 Q. All right. And you were married on the date that
4 you completed the schedules that would be -- or filed on
5 January 29th of '08?

6 A. Yes, sir.

7 Q. And so the answer to this question 16 must be an
8 error?

9 A. Yes, sir.

10 Q. Okay. So you would change that to say that you do
11 have a spouse and her name is Lisa Riggert?

12 A. Yes, I do have a spouse named Lisa Riggert.

13 Q. All right. Let me ask you to turn to Exhibit 19.

14 A. Yes, sir.

15 Q. Is that you identified on Exhibit 19 in an agreed
16 judgment?

17 A. Yes, sir.

18 Q. Do you recall authorizing your attorney, Nona
19 Thompson, to enter into an agreed judgment and have the Court
20 enter this judgment?

21 A. I -- when was this in 1987, Mr. Laun?

22 Q. I believe it was '88, February 12th of '88.

23 A. No, sir, I do not recall that.

24 Q. So you don't remember being sued by MBank, Lincoln
25 Center?

1 A. Yes, sir, I do.

2 Q. Oh, okay. Was a judgment rendered against you?

3 A. Yes, sir.

4 Q. Do you have any reason to believe this isn't the
5 judgment that's Exhibit 19?

6 A. I don't have any recollection, Mr. Laun.

7 Q. All right. Let me ask you to turn to Exhibit 20.
8 Have you ever seen this assignment of judgment?

9 A. I can't assure you that I have from looking at it
10 now.

11 Q. Do you have any reason to doubt the statements made
12 in this assignment are not true?

13 MS. BARTHOLOW: Your Honor, there's no reason
14 for the question. He said he's never seen it before.

15 THE COURT: Sustained.

16 Q. Let me ask you to look at Exhibit 21.

17 Have you ever seen this document before?

18 A. I'm sorry, Mr. Laun, I thought I was on 21 the last
19 time.

20 Q. 21, you've never seen Exhibit 21?

21 A. Again, I don't recall.

22 Q. Okay. Let me direct your attention to Exhibit 5.

23 A. Yes, sir.

24 Q. Do you recall a sheriff's deputy coming to visit
25 you on May 25th of 1998 with a writ of execution?

1 A. Mr. Laun, I don't remember that, but I'm assuming
2 that it was -- that a constable or somebody served me.

3 Q. All right. Let me ask you to turn to Exhibit 6.

4 Do you recall on December 7th of '07 that a constable
5 appeared and sought to levy this writ of execution?

6 A. Yes, sir.

7 Q. You do recall that? You do recall that?

8 A. Yes, sir. I thought I answered already, I'm sorry.

9 Q. And did you have any property to give to the
10 constable?

11 A. No, sir.

12 Q. Okay. Let me direct your attention to Exhibit 12.

13 Do you recognize Exhibit 12?

14 A. Yes, sir.

15 Q. And what is it?

16 A. Personal financial statement.

17 Q. And what was the purpose of you completing this
18 document?

19 A. The Cadle Company asked me to.

20 Q. All right. Down there on -- under assets, cash on
21 hand, it's got \$11,000.

22 THE COURT: Just a minute.

23 Ms. Bartholow?

24 MS. BARTHLOW: Yes, Your Honor. I'm going to
25 object as to relevance. This is -- the cause of action

1 before us today is limited to was there a proper disclosure
2 of the agreement between the parties in the refinancing of
3 the home. This financial statement with the Cadle Company
4 has nothing to do with the refinancing of the home.

5 THE COURT: Your response to the relevance
6 objection?

7 MR. LAUN: Your Honor, this testimony and this
8 exhibit is going to the concealment issue that this debtor on
9 the date that he provided this had already made the transfer
10 and failed to identify it in this financial statement. That
11 is why it's part of the concealment of the asset.

12 THE COURT: I overrule the objection.

13 You may proceed.

14 Q. Did you -- on this -- was this financial statement
15 true and correct on the day that you signed it?

16 A. In all material respects.

17 Q. Well, what does that mean? You handwrote that in,
18 didn't you?

19 A. Yes, sir.

20 Q. Was that to qualify the true and correct?

21 A. No, sir.

22 Q. Well, what did it mean?

23 A. It's an unaudited financial statement.

24 Q. Oh, that's what it meant.

25 Is that what you meant?

1 A. To the best of my ability, yes.

2 Q. Okay. It means, to the best of my ability?

3 A. Yes, sir.

4 Q. Okay. Did you reveal anywhere on this personal
5 financial statement provided in August of '07 of the \$65,000
6 that your wife received in the refinancing?

7 A. It's a personal financial statement, Mr. Laun.

8 Q. Did you reveal anything about the transaction
9 concerning your homestead and the \$65,000 that was taken out
10 of the homestead?

11 A. It's my personal financial statement. It's not my
12 wife's.

13 Q. So you didn't reveal the existence of the agreement
14 that you were going to get that money back?

15 A. Mr. Laun, that's -- I'm not sure -- my wife had
16 refinanced the house. She got the money into her personal
17 account. Wire transferred directly into her. I never saw
18 the money.

19 Q. But you did have plans to get it back?

20 A. No, sir.

21 Q. Well, what is Exhibit 1 for, then?

22 A. To set out the equity in our house, my sole
23 separate property and her sole separate property. And the
24 refinancing proceeds went to her.

25 Q. And you would recover the \$65,000 at some future

1 point?

2 A. It's her \$65,000, Mr. Laun, not mine.

3 Q. Let me direct your attention to Exhibit 11.

4 A. Yes, sir.

5 Q. Line 105 of Exhibit 11, do you know who that payoff
6 went to, \$5,000?

7 A. That was a partial release payment to the Cadle
8 Company.

9 Q. Okay. So you owed some money to the Cadle Company
10 and you negotiated a partial release of lien?

11 A. The Cadle Company would -- even though there was --
12 they're not allowed in the State of Texas, my understanding
13 is that they can't hold up a refinance. But the title
14 company, they wouldn't give a partial release unless the
15 title company paid them \$5,000 out of the refinancing.

16 Q. Did you negotiate that yourself with the Cadle
17 Company?

18 A. With the title company.

19 Q. You didn't talk to Cadle about this?

20 A. Yes, sir.

21 Q. You did?

22 A. I did.

23 Q. And who did you talk to?

24 A. Nate Smith.

25 Q. And did you represent to him how much there was

1 going to be excess proceeds from the refinance?

2 A. He had a copy of the closing statement, I think.

3 Q. Prior to the closing?

4 A. Oh, we've talked in generalities.

5 Q. Did you send him a copy of the closing statement
6 prior to closing?

7 A. I don't remember.

8 Q. Did you tell him that you were receiving \$65,000
9 out of the closing?

10 A. No, sir. I said that there would be \$65,000 --
11 somewhere the amount of \$60,000.

12 Q. And you made that representation to him?

13 A. I didn't rep and warrant anything, Mr. Laun.

14 Q. Your deposition was taken on July 26th of '07.

15 A. Yes, sir.

16 Q. By the Cadle Company, and I took it.

17 A. Yes, sir.

18 Q. Did you reveal the existence of the home
19 refinancing agreement in that deposition?

20 A. No, sir.

21 Q. Why not?

22 A. Didn't exist at the time.

23 Q. When did you first start thinking about putting
24 together the home refinancing agreement?

25 A. In June.

1 Q. In June of '07 and --

2 A. At the time of the refinance.

3 Q. Okay. Well, your deposition was taken July 26th of
4 '07.

5 Were you still thinking about it then?

6 A. Yes, sir.

7 Q. Okay. But you hadn't consummated it or had it
8 written?

9 A. No, sir.

10 Q. Okay. So you didn't turn it over to the Cadle
11 Company at the deposition on July 26th?

12 A. No, sir.

13 Q. You did turn over some other documents, didn't you?

14 A. I'm sure I did.

15 Q. When did you ultimately turn over a copy of the
16 home refinancing agreement to the Cadle Company?

17 A. I'm not sure of the exact date.

18 Q. Would that have been in November of 2007?

19 A. Could have been.

20 Q. I'm sorry -- 2007, yes.

21 A. Could have been, Mr. Laun.

22 Q. Well, was it -- did you have -- did you bring a
23 copy to the 341 Meeting?

24 A. Which is that, Mr. Laun?

25 Q. The Meeting of Creditors that you had in your

1 bankruptcy case.

2 A. I can't remember. I don't know if I did or not.

3 I know that it was discussed because you brought it up.

4 MR. LAUN: May I step back?

5 THE COURT: You may.

6 MR. LAUN: I have no more questions for this
7 witness, Your Honor.

8 THE COURT: All right.

9 Ms. Bartholow, your cross?

10 THE WITNESS: Molly, do you mind if I get a
11 drink of water?

12 MS. BARTHLOW: Sure, go right ahead.

13 THE WITNESS: They told me it was fresh. It
14 looks like there was a bug in it.

15 THE COURT: You thought there was a bug in it?

16 THE WITNESS: It looked -- the way the light
17 reflected.

18 THE COURT: She put fresh water in here this
19 morning before we started.

20 THE WITNESS: It's nice and cold.

21 CROSS-EXAMINATION

22 BY MS. BARTHLOW:

23 Q. Okay. Mr. Riggert, would you please turn to the
24 Government -- excuse me, not the government, Cadle Company's
25 Exhibit 7.

1 A. Yes, ma'am.

2 Q. And you'll see that that's your Schedule A of your
3 real property; is that correct?

4 A. Yes, ma'am.

5 Q. You stated that your homestead had a value of
6 \$700,000?

7 A. Yes, ma'am.

8 Q. Is that correct under the column?

9 What is your opinion of the value of the house today?

10 A. About the same.

11 Q. Okay. And what do you base that on?

12 A. My recent D-CAT appraisal came in at \$662,000, or
13 thereabouts.

14 Q. Okay. And you'll see that we've noted that the tax
15 appraisal was 434.

16 Do you see under --

17 A. Yes, ma'am.

18 Q. Okay. Why is there such a spread between the tax
19 appraisal from I guess '07 was probably what you're looking
20 at and what we said the value was?

21 A. Yes, ma'am.

22 Q. Why is there a difference between what the tax
23 appraisal put on the value of the house and what you stated
24 the house value was?

25 THE COURT: Mr. Laun?

1 MR. LAUN: Your Honor, the plaintiff objects
2 as to relevance.

3 THE COURT: Relevance?

4 MS. BARTHOLOW: Your Honor, I think what
5 they're trying to do is they're trying to say that there was
6 a receivable from Mrs. Riggert. And what we're trying to say
7 is there was a division of equity. And in order to have a
8 division of equity and to show that there was no intent to
9 hide anything from creditors, we need to establish there was
10 equity in the home.

11 THE COURT: Overrule the objection.

12 You may answer.

13 A. The recent appraisal has the land value of the
14 property at \$600,000. Home improvement value, \$66,000.

15 Q. Okay. But I'm asking you about at the time you
16 filed your Schedule A here --

17 A. Yes.

18 Q. -- there was a tax appraisal value that we told the
19 Court about was 434?

20 A. Yes, ma'am.

21 Q. Why was it so low, if you know?

22 A. That's just what the D-CAT had.

23 Q. To your knowledge have they come out and
24 re-appraised?

25 A. Yes.

1 Q. Okay. Now, when you valued the house at 700,000,
2 was that based on the refi that you had done in June?

3 A. Yes. That was based on the appraised value that
4 the appraisers put on the property when they appraised the
5 house.

6 Q. For the refinancing?

7 A. Yes.

8 Q. Now, being in the real estate business, are you
9 aware of the general ratios that mortgage companies require
10 in order to make a home equity loan?

11 A. They couldn't go beyond 80/20, 80 percent loan to
12 value.

13 Q. Okay. So --

14 A. That's the maximum under the Texas law.

15 Q. Okay. All right. Now, if you and Ms. Riggert were
16 to sell your home, do you have any other home to move to?

17 A. No.

18 Q. Have you ever considered selling your home?

19 A. Yes.

20 Q. Okay. If you were to sell your home today, you
21 would get the first 65,000 in equity as your separate
22 property, correct?

23 A. Yes.

24 Q. Do you have any other money to buy a house with?

25 A. Not at this time.

1 Q. Okay. So when you were making the agreement with
2 Mrs. Riggert, in your mind were you ever going to take the
3 equity out of the house to do anything but buy another house?

4 A. No.

5 Q. Okay. So, again, just to be clear, the Exhibit
6 Number 1, which is the home refinancing agreement --

7 A. Yes, ma'am.

8 Q. In your mind was this nothing more than a
9 reallocating of equity in the home?

10 A. Correct.

11 Q. Okay. Now, you do see that, as Mr. Laun has
12 pointed out, that there is a repayment section in there,
13 contingent, contingent on sales proceeds not being
14 sufficient?

15 A. Right.

16 Q. How long have you lived in your home?

17 A. Since July of 1983.

18 Q. Has there ever been a time where the home's value
19 has declined?

20 A. No.

21 Q. Did you, when you made this agreement, think that
22 the event of the value of the home being not enough to
23 generate the \$65,000 in home equity back to you, did it ever
24 occur to you that there wouldn't be enough value in your home
25 to do that?

1 A. No. I always felt that the eventual sale of the
2 property, there would always be enough equity in the house
3 to -- that I was safe in preserving my portion of the equity
4 in the house.

5 Q. How old a man are you?

6 A. Way too old.

7 Q. I understand.

8 A. Born in 1954.

9 Q. And that makes you?

10 A. Well, let me take a look.

11 2009 minus 1954, I will be 55 on the 31st of May.

12 Q. All right. And what is the age of your wife?

13 A. I'm never supposed to tell that.

14 Q. Well, I understand, but you can today.

15 A. She was born in 1957.

16 Q. Okay. So she's around 55 --

17 A. You're 52, aren't you?

18 Q. Okay. 52.

19 A. I have her permission to say that she's 52.

20 Q. Okay. Now, I'm going to ask you to look at Exhibit
21 8 in front of you.

22 A. Yes, ma'am.

23 Q. And if you'll please flip the pages and tell me
24 when you've arrived at paragraph 12 of Exhibit B, about the
25 second page.

1 A. Interest in IRA?

2 Q. Right. Right.

3 A. Yes.

4 Q. You're showing \$400. Is that all of the retirement
5 that you and your --

6 MR. LAUN: Your Honor, we're going to object
7 as to relevance.

8 MS. BARTHOLOW: Again, it goes to motivation
9 as to why are we doing this refinancing and what are we going
10 to do with the money if we sell it.

11 THE COURT: Overrule the objection.

12 You can answer.

13 A. Yes. The IRA pension plan, my security benefit was
14 at the time about \$400.

15 Q. Has it changed substantially now?

16 A. I haven't looked. But I suppose it's not -- I
17 don't expect it to have gone up.

18 Q. Due to market conditions or --

19 A. Yes

20 Q. Okay. So you haven't made additional contributions
21 to the IRA?

22 A. No.

23 Q. Has Mrs. Riggert made any contributions?

24 A. Not that I'm aware of.

25 Q. All right. So how are you going to be able to find

1 houses if you were to sell your home in the near future?

2 A. I'm going to have to live in a smaller home.

3 Q. Okay. But how are you going to find a smaller
4 home? What proceeds do you have, what money do you have?

5 A. We'd have to sell the house and use the proceeds
6 from the sale of the house to move to a different house.

7 Q. Okay. Because there just aren't any other assets;
8 is that correct?

9 A. That's correct.

10 Q. All right. Now, Mr. Riggert, when you executed
11 the schedules and on Exhibit 9 you listed Cadle Company --

12 A. Yes, ma'am.

13 Q. And you listed the judgment and the amount on the
14 judgment and that sort of thing.

15 Did you know whether the Cadle Company had properly
16 perfected an ownership interest in their judgment?

17 A. No.

18 Q. Then why did you list them there as a creditor?

19 A. The constable had come to my house and produced a
20 document that said that there was a judgment owed.

21 Q. Okay. And I think you've already testified they
22 took your deposition saying that they owed the money; is that
23 correct?

24 A. That's correct.

25 Q. And they demanded money to release the lien when

1 you refinance; is that correct?

2 A. That's correct.

3 Q. And they also had garnished your account?

4 A. Yes, ma'am.

5 Q. So in your mind was there any reason to think that
6 they didn't own it?

7 A. Well, they were certainly enforcing it.

8 Q. Okay. Did they ever show you any documentation to
9 prove that they own this judgment?

10 A. No.

11 Q. Now, the failure to list your wife on paragraph 16
12 of Exhibit 10, was that intentional or an oversight?

13 A. Oversight.

14 Q. Okay. I'll point out that paragraph 3(c) that
15 Mr. Laun pointed out earlier lists your daughter, lists your
16 mother-in-law, mentions your wife's income and your wife's
17 car; is that correct?

18 A. Would you point me to the correct --

19 Q. Okay. We're looking at Exhibit 10.

20 A. Okay.

21 Q. And then 3(c).

22 A. Yes, I'm there now.

23 Q. Okay. It's clear you were indicating that you were
24 married and that you had a wife?

25 A. Yes.

1 Q. Okay. Did you have any reason whatsoever to hide
2 the fact that you had a wife to the creditors?

3 A. No.

4 Q. Had you told Cadle Company previously that you had
5 a wife?

6 A. Yes.

7 Q. Was Cadle Company aware that your wife was getting
8 the loan when it got refinanced in June?

9 A. Yes.

10 Q. Did the Cadle Company also receive the closing
11 document?

12 A. Yes, ma'am.

13 Q. Okay. How did they et that?

14 A. They subpoenaed them, Countrywide and the title
15 company.

16 Q. Okay. Would you please --

17 MS. BARTHOLOW: Pass the witness, Your Honor.

18 THE COURT: All right. Redirect?

19 MR. LAUN: Just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. LAUN:

22 Q. Let me ask you to look at Exhibit 1 again, please.

23 A. Yes, sir.

24 Q. Paragraph 5 contains a contingency under which your
25 spouse would owe you money.

1 A. Yes, sir.

2 Q. Paragraph 6, likewise, is a paragraph in which
3 there's a contingency that if it occurs your wife would owe
4 you money.

5 A. Let me re-read that, Mr. Gate -- Laun, sorry.

6 I see that.

7 Q. And you agree that there's a contingency that your
8 wife would owe you money if the contingency was met?

9 A. Yes, sir.

10 MR. LAUN: Okay. I don't have any more
11 questions of this witness, Your Honor.

12 THE COURT: All right. Any recross?

13 MS. BARTHOLOW: No, Your Honor.

14 THE COURT: Thank you, Mr. Riggert. You're
15 excused from the witness stand.

16 Let's take a five minute bathroom break and come back
17 for the next witness.

18 (Brief recess ensued.)

19 THE COURT: We're going back on the record now
20 in Cadle Company v. Riggert.

21 Are you ready to call your next witness?

22 MR. LAUN: The plaintiff has no more
23 witnesses, Your Honor.

24 THE COURT: Okay. The plaintiff rests?

25 MR. LAUN: Yes.

1 THE COURT: All right. Ms. Bartholow, your
2 defense.

3 MS. BARTHLOW: Your Honor, at this point we
4 would ask for judgment. I don't believe that they have
5 properly proved that they do have the ownership of the
6 judgment that they have marked as Exhibit 2. I would point
7 to their Exhibit 3. This is the assignment from MBNA to Bank
8 One. There's the FDIC as receiver of MBank. It's assigning
9 to Bank One. And I'll point out that the first paragraph
10 refers to an Exhibit A. But there is no Exhibit A attached
11 to this document. So the Court doesn't know what was
12 transferred pursuant to this assignment.

13 Now, I would ask the Court to flip over to Exhibit 20.

14 THE COURT: Okay.

15 MS. BARTHLOW: On Exhibit 20 we have
16 something that has stamped across it, Unofficial document.
17 And it has an Exhibit A attached to it. Now, if this is
18 unofficial --

19 MR. LAUN: Your Honor, this appears to be an
20 objection to an exhibit being made. The exhibits have been
21 admitted. And the only objection could be relevancy.

22 Is that the nature of the objection being made?

23 THE COURT: Well, Ms. Bartholow, respond, what
24 I thought you were doing was asking for judgment. And I
25 think you're making the argument that Cadle has not

1 established through its evidence that it is even a holder of
2 a claim against the debtor.

3 MS. BARTHOLOW: Correct, Your Honor.

4 THE COURT: So is the motion for judgment
5 because of lack of standing?

6 MS. BARTHOLOW: Correct, Your Honor.

7 THE COURT: So you're just walking me through
8 these exhibit, not per say as an objection --

9 MS. BARTHOLOW: And in fairness to Mr. Laun,
10 I'm trying to point out that there was another document that
11 appears to be a copy of Exhibit 2, although it has unofficial
12 across it. And it does appear to have an attachment to it,
13 an Exhibit A. And Mr. Riggert's name appears on there. But
14 it references volume 88251 and page 0575. And it is that
15 document that identifies what was transferred. So we should
16 have that document in the packet. And I don't see it
17 anywhere.

18 We know it's not Exhibit 19, because the pages at the
19 top are not the same. They're 000573 and there's no
20 indication that it's a book. So the judgment that is
21 identified on Exhibit A isn't here. And that's part of my
22 argument.

23 But assuming I fail on that for whatever reason, then
24 you turn to assignment of judgments. And I'm just going to
25 go to Exhibit 21. There is a copy, Exhibit 4, regarding -- I

1 think these are an identical set.

2 Okay. But looking at this Exhibit 4, there's
3 referenced in there other documents that we don't have that
4 condition the assignment. The last paragraph is in all caps
5 and it says, The assignment contemplated hereby is without
6 recourse, representation, or warranty, except to the extent
7 restricted, only to the extent set forth in that certain
8 agreement for sale and purchase of notes and judgment, the
9 agreement dated May 28th, 1992 by and between assignor and
10 assignee, which agreement is incorporated herein by reference
11 for all purposes including specifically but not by way of
12 limitation paragraphs 26, 27, 29, and 30.

13 Well, you know, Your Honor, we don't know what those
14 restrictions are. We don't know whether they only got
15 assigned a certain portion of the agreement or what those
16 restrictions are. So, again, we don't have proof of an
17 unfettered assignment from someone starting with MBank, or
18 Mercantile Bank, all the way through to Cadle Company. We've
19 got kind of a snuff at it, but we don't get there. And
20 Exhibit A, again, the same Exhibit A that was on the prior
21 assignment document refers, again, to the judgment on
22 882510575. And we don't have that document.

23 Interestingly, when you look at the next exhibit, which
24 is Exhibit 5, they don't refer to the Exhibit A referenced.
25 They refer to something else. They're saying, Manifest and

1 book -- I'm sorry, I'm reading in the middle of the page
2 right under where James Riggert is in all caps. It says for
3 the sum of \$40 thousand plus dollars besides costs as of
4 record is manifest in book 1268573 of the records of said
5 court.

6 Well, okay. That seems to relate to Exhibit 2. But
7 Sheriff can't go out and execute on Exhibit 2 until there's
8 proof that Exhibit 2 got to Cadle. I understand that's what
9 Cadle thought they were executing on. But this -- my
10 understanding of what Texas law is, is that you have to have
11 an abstract of judgment in order to preserve the judgment
12 that, yes, you can execute on the judgment, but we don't have
13 something that assigns anything but what's on Exhibit A,
14 which is volume 88251 and page 0575. And we don't have that
15 document here. We don't have proof of what it is. We've got
16 an inkling of what it might be, but it's not here before us
17 today.

18 So first I'm asking for judgment on the fact that I
19 don't think that they have standing to bring this action.
20 Second, I don't believe that they've proven any intent or
21 materiality. The issue here is we've got an agreement
22 between spouses that's designed in their minds to deal with
23 the division of equity. And the division of equity is not
24 going to be available for creditors.

25 Now, there's a contingency even under the Texas law.

1 If they sell their home and don't reinvest the proceeds in
2 six months, then there's a contingency that the equity in the
3 home would be available to creditors at that time. But I'm
4 not aware of Courts that view that contingency as enough to
5 strip one party or the other from their interest in the home,
6 when the home is homestead. No objection to homestead has
7 been raised. And so what that would mean is every single
8 debtor who is married and the spouse doesn't file would have
9 to list as a contingency that perhaps there would be a sale,
10 there wouldn't be -- that was it. And the equity wouldn't be
11 reinvested in six months. And I don't think that was
12 realistic. I think that is exactly the context the parties
13 were thinking of here. They had just gotten their refinance
14 where the Bank had valued it for 700,000. They never thought
15 that the contingencies could ever happen.

16 We all know now that market values go up. They go down
17 on houses. But this house's value hasn't gone down. So the
18 contingency is still not realistic. And I -- I don't see
19 that it's a material issue under the definition of Pratt and
20 this Court's review in the Hughes case. I don't see that
21 they've shown any intent to defraud. What they've shown is
22 that Mr. Riggert communicated with Cadle. That Cadle knew
23 about the transaction, knew the money went right from the
24 title company into Mrs. Riggert's account. And to show you
25 that they knew that, they have provided Exhibit 16, which is

1 a domestic outgoing wire transfer request. And the
2 originator is Hextor Fair Title Company. And they list the
3 originator's address and all of that.

4 THE COURT: Ms. Bartholow, I'm going to go
5 ahead and end this and make a ruling on the motion for
6 judgment.

7 I'm going to deny the motion. And I do want to hear
8 your defensive evidence. But first let me address the
9 standing argument which you made, the alleged lack of
10 standing of Cadle. The evidence in your view not
11 establishing a clear chain that they are a creditor of
12 Mr. Riggert.

13 I have wrestled with this type of issue before where we
14 had a 727 trial and then argument is made that the creditor
15 doesn't have standing. And I have written an opinion, I
16 don't think it's a published opinion, but it would be on the
17 web site, 8400 Northwest v. Morgan, where I've addressed this
18 issue.

19 The Court interprets the law out there to be as
20 follows. Even if a creditor is a disputed creditor, for
21 example, even if there was a claim objection that had already
22 been filed in this case by you or the Trustee, even if the
23 Court had tried to conclusion and disallowed Cadle's claim
24 and that was let's say on appeal at the District Court by
25 Cadle, I interpret the 5th Circuit law to be that they still

1 have standing to go forward with the 727 action.

2 In the 8400 Northwest v. Morgan case I cited a 5th
3 Circuit case or opinion entitled Stanley v. Vahlsing,
4 V-a-h-l-s-i-n-g, 829 F.2d 565, 5th Circuit 1987. It's not
5 precisely on point to your situation here, but I think it
6 does stand for the proposition that unless a creditor's claim
7 has been finally disallowed through every level of
8 adjudication, they still have standing to go forward on a 727
9 action. And I know that's an awkward chicken/egg situation
10 for debtors in this situation, but that is how I interpret
11 the 5th Circuit law which I'm bound by.

12 So, again, even though I see that there is a dispute,
13 of course, Mr. Laun disagrees because of the schedules that
14 have been admitted into evidence, I don't think those are an
15 admission or binding on you. The fact that there's a dispute
16 here under Vahlsing I think does not matter as long as they
17 still have a chance at the end of the day of having an
18 allowed claim, they get to go forward.

19 Now, with regard to the other argument. You know,
20 you're seeking my judgment that they have not established
21 intent as a matter of law. I'm still pondering that,
22 Ms. Bartholow, and I'm not in a position right now to make
23 the conclusion you want me to make. So I am going to deny
24 the motion and I want to hear your defensive evidence.

25 MS. BARTHLOW: Thank you.

1 THE COURT: All right. So with that, I ask
2 you to call your first witness.

3 MS. BARTHOLOW: I'll call Mr. Riggert.

4 THE COURT: Mr. Riggert, you can take your
5 seat on the stand again. And I'll remind you you're still
6 under oath from the last swearing in.

7 JAMES RIGGERT

8 The witness, having been previously sworn to tell the truth,
9 testified on his oath as follows:

10 DIRECT EXAMINATION

11 BY MS.BARTHOLOW:

12 Q. Okay. Mr. Riggert, would you explain to the Court
13 the circumstances that drew you and Mrs. Riggert to consider
14 putting a new loan on your home? Why was that necessary?

15 A. To pay Trinity University where my daughter goes
16 was asking for their tuition, so we needed to seek a home
17 equity loan to pay for the \$17,000.

18 Q. Okay. Was that the only source of funds you had?

19 A. Yes.

20 Q. Now, why was Mrs. Riggert the one to seek the loan?

21 A. My credit isn't -- my credit score did not allow me
22 to get approval.

23 Q. Did the Cadle Company show up on your credit score?

24 A. On my credit report, yes.

25 Q. Okay. Now, was it your understanding that the

1 money that was going to come out of any refinancing would go
2 to your wife directly and not to you?

3 A. That was always the case. It would always go to
4 Lisa.

5 Q. Okay. And why was that?

6 A. We've operated a long time with her separate
7 property and my separate property. And it was her loan and
8 she was getting the proceeds.

9 Q. Okay. Now when you executed Exhibit 1, which is
10 the home refinancing agreement, did you go to the attorney to
11 draw something up?

12 A. We asked the attorney to draw something up.

13 Q. Okay. Let's name the attorney.

14 A. John Justima.

15 Q. Okay. And is he someone who has done work for you
16 before?

17 A. Yes.

18 Q. Okay. What was the purpose of the homestead
19 refinancing agreement?

20 A. To just make it clear that the money that was
21 Lisa's equity and my equity stayed in the house.

22 Q. Okay.

23 A. That's it. It was her sole property.

24 Q. Now, you've heard Mr. Laun focus on different
25 paragraphs about the repayment of the equity portion.

1 You must say yes or no.

2 A. Yes.

3 Q. Because they can't pick it up.

4 Okay. When you went to the attorney and asked for this
5 to be drafted, was that something that you told the attorney
6 to include?

7 A. No.

8 Q. What directions did you give the attorney?

9 A. We'd like a home refinancing exhibit that clearly
10 identifies that the proceeds from the refinance were Lisa's
11 sole separate property and that my equity stayed in the
12 house.

13 Q. Okay. Did he call you back in and go over every
14 paragraph when you signed this?

15 A. We assumed that it was -- you know, we sat down, we
16 looked through it, we signed it. We didn't go through
17 everything left and right and we just assumed that this is an
18 agreement between Lisa and I that the proceeds were her sole
19 separate property and my equity was still in the house. And
20 that when the house ever gets sold, the equity that -- the
21 first part of the equity that comes out is mine.

22 Q. Okay. Did you ever consider that any of these
23 contingency events, like the sales price wouldn't be enough
24 to generate enough to pay you back?

25 A. No.

1 Q. Or to pay you \$65,000?

2 A. We never considered any of those contingencies
3 ever. We just focused on the first part. The net
4 refinancing proceeds are intended to be and shall constitute
5 the sole separate property of wife. Husband hereby disclaims
6 and renounces any community property or other interest in the
7 net refinancing proceeds.

8 Q. Okay. But now it's time to consider, because the
9 Court needs to understand, do you view these contingencies as
10 real or imminent today?

11 A. No. No.

12 Q. Why not?

13 A. The house value is above the note value. I mean,
14 the house value is for somewhere around 650, \$700,000. And
15 the debt is about 491,000.

16 Q. Okay. When you were doing your schedules, were you
17 thinking that there might be a shortfall in the equity so
18 that your wife would end up owing you money?

19 A. No, never.

20 Q. Was that something that -- never mind. Withdraw the
21 question.

22 MS. BARTHLOW: No further questions.

23 THE COURT: All right. Cross, Mr. Laun?

24

25 (no omission)

1 CROSS-EXAMINATION

2 BY MR. LAUN:

3 Q. Did I understand you, Mr. Riggert, that the
4 agreement that's Exhibit 1 contains some provisions that you
5 do not approve of, or you did not approve of, or you now
6 don't approve it?

7 A. Never expected to have happen.

8 Q. Okay. But you approved the entire agreement?

9 A. We signed the entire agreement.

10 Q. And you understood it had some contingencies at the
11 time you signed it?

12 A. Yes, sir.

13 Q. Okay. But you just didn't think that that would
14 occur in the future?

15 A. We didn't understand it really, Mr. Laun. And we'd
16 never expected them to occur.

17 Q. Okay. So you didn't understand the contingencies
18 in the agreement?

19 A. No. We understood them, but never -- thought
20 they'd never occur. They seemed like --

21 Q. Well, let me ask you this.

22 A. Yes, sir.

23 Q. Do you keep any -- you know, since the purpose of
24 the agreement was to keep your separate estates with regard
25 to your home, you must have some records of that.

1 A. I'm not sure I understand.

2 Q. Well, do you keep any records with regard to how
3 much you've contributed to the payment of Mrs. Riggert's loan
4 on the house and the amounts that she's paid on it?

5 A. We're pretty bad record keepers, so the answer is
6 we'd have to go back and reconstruct them.

7 Q. You don't keep any specific records about who pays
8 what?

9 A. Yes, we do. I mean, I don't have a ledger.

10 Q. Okay. You don't keep a ledger or anything because
11 the agreement requires you to kind of keep track of that,
12 doesn't it, in paragraph 2?

13 A. Yes.

14 Q. Okay. So in order for the equities to be balanced,
15 there's got to be some record keeping about who pays what on
16 the mortgage?

17 A. I guess you could read it that way. I don't really
18 read it that way.

19 Q. How do you read it?

20 A. Interest on the \$123,000 difference between the
21 original loan and the new along paid by the wife. So we make
22 payment on the house and part of the payments are made from
23 the -- the first balance.

24 Q. Are you keeping track on the interest accruing on
25 the \$123,250?

1 A. Not on a regular basis.

2 Q. Have you done it ever?

3 A. Not yet.

4 Q. Have you calculated how much you've contributed to
5 the payments made to Countrywide?

6 A. Not yet.

7 Q. When you say "not yet", because you don't care to
8 keep track of that?

9 A. We're pretty bad record keepers.

10 Q. Okay. The -- let me ask you to turn to 16, please.

11 This account that's identified here on Exhibit 16, is
12 that an account controlled solely by Mrs. Riggert?

13 A. I don't know.

14 MS. BARTHOLOW: Your Honor, there are two
15 accounts referenced here, the outgoing and the incoming.

16 THE COURT: Okay. Let's be more specific,
17 Mr. Laun.

18 MR. LAUN: All right. I apologize, Your
19 Honor.

20 Q. Mrs. Riggert doesn't work for Hextor Fair, does
21 she?

22 A. No, sir.

23 Q. Okay. She doesn't have an account with them?

24 A. No, sir.

25 q. Okay. Let me ask you then, the account that's

1 identified as beneficiaries account number, and beneficiary
2 is Lisa B. Riggert, is that a bank account that belongs to
3 Mrs. Riggert?

4 A. I don't know which account that is, Mr. Laun.

5 Q. Were you a signer on any of Mrs. Riggert's bank
6 accounts?

7 A. No.

8 Q. So it's fair to say that you're not a signer on
9 this Chase bank account?

10 A. Correct.

11 MR. LAUN: We don't have any more questions,
12 Your Honor.

13 THE COURT: All right. Any redirect?

14 MS. BARTHOLOW: Yes.

15 May I approach the witness?

16 THE COURT: You may.

17 REDIRECT EXAMINATION

18 BY MS. BARTHOLOW:

19 Q. Mr. Riggert, would you please turn to Exhibit D-D?

20 A. Yes, ma'am.

21 Q. And what is the name on that account?

22 A. Lisa B. Riggert.

23 Q. And is it with Chase Bank?

24 A. Yes.

25 Q. And do you see right underneath the top left-hand

1 corner it says, Chase, and then it says JP Morgan Chase Bank;
2 do you see that?

3 A. Yes.

4 Q. Okay. And somewhere it has an account number.
5 Okay. In the upper right-hand corner it has an account
6 number; do you see that?

7 A. Yes.

8 Q. The last four digits are 6716; do you see that?

9 A. My copy reads 5716.

10 Q. Okay. And now I'll ask you to look at Plaintiff's
11 Exhibit 27.

12 MR. LAUN: I think you mean 16.

13 MS. BARTHOLOW: I'm sorry, I do. Thank you.

14 THE COURT: Okay.

15 MS. BARTHOLOW: I apologize.

16 Q. And again looking at the beneficiary information
17 where you see that the person receiving the wire is named as
18 Lisa Riggert and it's at a JP Morgan Chase account and the
19 last four digits are 5716.

20 A. 5716.

21 Q. Okay. All right. So it appears to be the same as
22 Exhibit D-D; is that correct?

23 A. Yes.

24 Q. All right. To your knowledge, did your wife
25 receive a wire from the title company?

1 A. Yes.

2 Q. Okay. You'll see on D-D it says right under
3 checking summary, deposits and additions, 67,540.44; do you
4 see that?

5 A. Yes, I do.

6 Q. Okay. And right below captioned in a box deposits
7 additions; do you see that?

8 A. Yes.

9 Q. All right. There's a date, 07/09; do you see that?

10 A. Yes.

11 Q. Okay. And then moving across the page to the right
12 it says, FID wire credit and it mentions Hextor Fair,
13 correct?

14 A. Yes.

15 Q. And the amount is 65,864.49?

16 A. Yes.

17 Q. Do you see that?

18 A. I do.

19 Q. All right. Let's go back to 16. And flip to the
20 second page. And toward the middle of the page toward at the
21 bottom it says, amount of transfer:?

22 A. Yes.

23 Q. 65,864.49?

24 A. Yes, ma'am.

25 Q. Okay. So this appears -- this Exhibit 16 appears

1 to have been received at the Chase Bank in the name of Lisa
2 Riggert on 7 -- July 9th?

3 A. Yes.

4 MS. BARTHLOW: No further questions.

5 THE COURT: All right. Any recross?

6 MR. LAUN: Just one question.

7 RECROSS-EXAMINATION

8 BY MR. LAUN:

9 Q. The account that's identified in Exhibit D, that
10 Lisa Riggert account, you're not a signer on that account,
11 are you?

12 A. No.

13 Q. Okay. And you -- you were interested in not having
14 any large sums of money in your bank account because of the
15 possibility of it being garnished by Cadle?

16 A. I have money in my bank account, Mr. Laun. This is
17 my wife's sole separate property.

18 Q. Okay. But that was one of the reasons why you put
19 the money with your spouse, right?

20 A. I didn't put the money with my spouse, Mr. Laun.

21 Q. It was your money, wasn't it?

22 A. No.

23 Q. Oh, it was her money?

24 A. It was her money.

25 Q. But you were going to -- you were supposed to get

1 it back, though, under the home refinancing agreement, you
2 understand that?

3 A. I see your point you're making. But, no, that
4 money was my wife's money, never my money.

5 Q. So what's the purpose of the home refinancing
6 agreement where you get the \$65,000 paid back to you on the
7 sale of the house?

8 A. No, no. My portion of the equity is still in the
9 house. That's her portion of the equity that was taken out
10 of the house.

11 Q. Okay. So you don't -- but you do get the first
12 \$65,000 of the net proceeds?

13 A. The first 65,000, yes.

14 Q. Okay.

15 MR. LAUN: No more questions, Your Honor.

16 THE COURT: All right. Thank you,
17 Mr. Riggert. Once again you're excused from the stand.

18 Ms. Bartholow, any other evidence?

19 MS. BARTHLOW: Yes, thank you, Your Honor. I
20 call Mrs. Riggert.

21 THE COURT: All right. Mrs. Riggert, if you
22 could approach our court reporter and raise your right hand.
23 She'll swear you in before you take the witness stand.

24 (The witness was sworn by the Court.)

25 (no omission)

1 LISA RIGGERT

2 The witness, having been duly sworn to tell the truth,
3 testified on her oath as follows:

4 DIRECT EXAMINATION

5 BY MS. BARTHLOW:

6 Q. Would you please state your name.

7 A. Lisa Baber Riggert.

8 Q. Thank you. Ms. Riggert, you've heard the
9 discussion today.

10 Are you the wife of the debtor?

11 A. I am.

12 Q. And how long have you been married?

13 A. Since 1981.

14 Q. Okay. So were you married at the time that MBank,
15 Mercantile Bank got the judgment against your husband?

16 A. Yes.

17 Q. Okay. And you're aware of who the Cadle Company
18 is; are you not?

19 A. Yes, I am.

20 Q. Would it be fair to say that they have attempted
21 collections for many years?

22 A. Yes.

23 Q. Are you employed?

24 A. I am.

25 Q. How are you employed?

1 A. I'm self-employed as an interior designer with LBR
2 Designs, LLC. And I currently have a part-time job as
3 assistant manager at the St. Michael's Women's Exchange.

4 Q. Okay. Is that a paid job?

5 A. Yes. Hourly.

6 Q. Has it been important during your marriage that you
7 also have an income?

8 A. Yes.

9 Q. Okay. Would it be fair to say that your income is
10 uneven in the type of work you do?

11 A. Very much so.

12 Q. And would that also be true for your husband?

13 A. Yes.

14 Q. Have you maintained accounts in your sole name
15 throughout your marriage?

16 A. Yes.

17 Q. Okay. Let me ask you to turn to Exhibit D-E.

18 Do you recognize the account that's shown there?

19 A. Yes, I do.

20 Q. Is that your account?

21 A. Yes, it is.

22 Q. And you've heard me go through with Mr. Riggert the
23 July 9th wire transfer of \$65,864.49?

24 A. Yes.

25 Q. You see that on the statement there?

1 A. I do, yes.

2 Q. Okay. And do you know that to be a wire of the
3 home proceeds?

4 A. I do.

5 Q. Okay. Now, why did you seek the refinancing of
6 your house?

7 A. Well, we had several outstanding bills, one of
8 which was Trinity University. If we would not have
9 refinanced our home, if I would not have refinanced the home,
10 then Emily would not have been allowed to go back to Trinity
11 University in the fall because of lack of payment for her
12 tuition. In addition, we had living expenses that we needed
13 money to live off of.

14 Q. Okay. And neither you nor Mr. Riggert had the
15 funds available?

16 A. Had no funds available.

17 Q. Okay. What made you decide to do the home
18 financing all on your own?

19 A. Because my credit would allow it. It was the only
20 way we could do it. The only way I could do it would be to
21 refinance it. And Emily was in need of having her tuition
22 paid and I was happy to do it.

23 Q. Okay. When you sought refinancing, did the Bank do
24 a re-appraisal of your home?

25 A. Yes.

1 Q. What did they appraise it for, what amount?

2 A. I believe it was \$700,000.

3 Q. Okay. And was that important to the amount of the
4 loan that you could get?

5 A. Absolutely.

6 Q. Okay. Did you take the maximum that the mortgage
7 company would allow you take?

8 A. No, we didn't. There was still money that we could
9 have taken out. And I don't remember the exact figure, but
10 it could have been as much as 50,000 more that we could have
11 taken out.

12 Q. So the equity at the time you made the agreement
13 with your husband to split the proceeds --

14 A. Uh-huh.

15 Q. I'm not saying that correctly. You took your
16 equity out --

17 A. Correct.

18 Q. -- in the refinancing. At the time you did that,
19 there was substantial equity in the home?

20 A. Absolutely.

21 Q. Were you aware that the Exhibit 1 home refinancing
22 agreement had a requirement for you to repay your spouse in
23 the event that the home's value would not be enough to repay
24 him fully for --

25 A. No. I wasn't aware of that contingency. It was my

1 understanding that agreement laid out my equity in the home,
2 Jim's equity in the home. And that was my understanding.

3 Q. Okay. At the time you signed the home refinancing
4 agreement, was there any contemplation of selling the home?

5 A. No. No. That was really done just to make sure
6 that things were fair in our business dealings. We hadn't
7 been as good at record keeping. We thought it was a good
8 idea to get something structured so that in the event of the
9 death of one of us, or the sale of the house, that it could
10 all be done above board.

11 Q. Okay.

12 A. But never -- it's a stable relationship. We never
13 had any sort of indication that we were going to sell, that
14 we were going to have any reason to use that.

15 Q. And you understood that the home refinancing equity
16 agreement would be filed of record in the deed records?

17 A. Oh, yeah.

18 Q. And to your knowledge, was it filed?

19 A. I'm assuming it was, yes.

20 Q. Okay. So this was intended to put the world on
21 notice --

22 A. Right. Right.

23 Q. -- that you and your husband had this agreement?

24 A. Correct.

25 Q. Okay. Now, you understand that the Cadle Company

1 is trying to say that you and Mr. Riggert secreted this
2 agreement from the public?

3 A. I understand that. That's not the case.

4 MR. LAUN: Your Honor, object to that
5 characterization. We've never said that the public wasn't
6 notified by the deed records.

7 THE COURT: Sustained.

8 Q. To your knowledge was a copy of this home
9 refinancing -- homestead refinancing agreement provided to
10 the Cadle Company?

11 A. Yes.

12 Q. Was a copy delivered directly to Mr. Laun?

13 A. Yes.

14 Q. And why did you decide to give a copy of the
15 homestead refinancing agreement to Mr. Laun?

16 A. Full disclosure.

17 Q. Okay. Are there any of the home refinancing
18 proceeds remaining in your account?

19 A. None.

20 Q. Okay. Let me direct you to Debtor's Exhibit D-E.

21 A. Okay.

22 Q. And do you see that's an account at Merrill Lynch?

23 A. Uh-huh.

24 Q. And it's in your name; is that correct?

25 A. That's correct.

1 Q. And it says, separate property?

2 A. Yes.

3 Q. Okay. Now, let me ask you to flip about three
4 pages and you'll see an asterisk on the page.

5 MS. BARTHLOW: Your Honor, I will testify
6 that is my asterisk. It wasn't in the original.

7 Q. It's designed to help you see something called
8 funds received, \$30,000.

9 A. Uh-huh.

10 Q. Okay. What are those funds?

11 A. Those were funds that were from my refinance that I
12 took out of the Chase account and put into my Merrill Lynch
13 account.

14 Q. Okay.

15 A. After I had paid the Trinity University bill.

16 Q. Okay. And then those funds rolled over to D-F, the
17 remainder of those funds; is that correct?

18 A. That's correct.

19 Q. Would you look at D-F?

20 A. Yes, I see it.

21 Q. Okay. And you'll see again on the second page an
22 asterisk showing electronic transfer of 28,583.18.

23 A. I see that.

24 Q. Okay. And is that your recollection?

25 A. Yes, it is.

1 Q. That account is also styled, Lisa Baber Riggert,
2 separate property; is that correct?

3 A. It is.

4 Q. And that's another Merrill Lynch account that you
5 have?

6 A. Correct.

7 Q. Okay. At any time did you put any money from
8 Mr. Riggert in any of the accounts shown on D-D, D-E, or D-F?

9 A. No.

10 Q. Okay. And generally looking through here, do you
11 recall how the funds that went into these accounts, how they
12 were spent?

13 A. Yes. They were spent on insurance, Hartford
14 Insurance. They were spent on Hannah's tuition at Bishop
15 Lynch. And they were spent on living expenses.

16 Q. And I believe you said also the Trinity --

17 A. And Trinity, correct.

18 Q. Now, both of your daughters have learning
19 challenges; is that correct?

20 A. That's correct.

21 Q. Okay. And that's why they're -- they have been in
22 special schools?

23 A. This is correct. It's been by the recommendation
24 of various psychologists and psychiatrists that they be in
25 small private institutions where they can get remediation for

1 their learning differences.

2 Q. Okay. Are you aware of the value of the house
3 today?

4 A. Yes.

5 Q. And what would you say the value of the house is,
6 meaning your home?

7 A. The tax -- the tax valuation came in around
8 662,000. There's a house down the street that's of
9 comparable size that is on the market now for 739,000. We've
10 had discussions with various builders and a neighbor who is
11 actually interested in purchasing the property. At and
12 around those values.

13 Q. Okay. In your opinion is there sufficient equity
14 to repay your husband?

15 A. Absolutely.

16 Q. Okay. If you were to sell the house now, what
17 would you do with the proceeds?

18 A. We'd have to buy another house. We have no other
19 funds with which to buy a house.

20 Q. Thank you.

21 MS. BARTHOLOW: No further questions.

22 THE COURT: All right. Cross-examination?

23 CROSS-EXAMINATION

24 BY MR. LAUN:

25 Q. The Chase account that's identified as Defendant's

1 D and F, those are accounts solely controlled by you?

2 A. Correct.

3 Q. And Mr. Riggert is not a signer on those?

4 A. Mr. Riggert is not a signer on those.

5 Q. Has he ever been a signer on your bank account?

6 A. Never.

7 Q. Okay. Was the -- was the money deposited after the
8 closing that occurred, the wire transfer, Plaintiff's Exhibit
9 16 of the 65,000, was that put into your bank account because
10 of -- you didn't owe Cadle any money?

11 A. It was put into my bank account because it was my
12 money.

13 Q. Okay. And are you keeping any records of the
14 interest accruing on the 123,250?

15 A. I am not.

16 Q. Okay. Do you keep any records on how much money
17 Mr. Riggert contributes to the house payment as opposed to
18 your --

19 A. We have record of it, yes.

20 Q. But you don't keep a ledger or anything like that?

21 A. I don't keep a written ledger, no.

22 Q. When you say a record, you just mean cancelled
23 checks?

24 A. Yes. And a filing system.

25 Q. Okay. You don't know today how much he's paid

1 towards the mortgage on the house?

2 A. I don't.

3 Q. Okay. And towards that \$123,000.

4 A. I don't.

5 Q. When you testified earlier under examination by
6 Ms. Bartholow you suggested that the home financing
7 agreement, refinancing agreement, Exhibit 1, that you weren't
8 aware of the contingencies or Mr. Riggert --

9 A. Correct. Correct.

10 Q. But you -- so does it not express the agreement
11 between you and Mr. Riggert?

12 A. It expresses the agreement that I signed. I will
13 have to say that I focused on the very front of that
14 agreement, which was that my equity was my equity and Jim's
15 equity was his. And, frankly, I didn't read the fine print.
16 I did not review those paragraphs when I signed it. So it
17 was not my intent to go any further than my equity was my
18 equity and his was is. And his was still in the house.

19 Q. Were you aware that the Cadle Company executed a
20 writ of garnishment on Mr. Cadle's (sic) Merrill Lynch
21 account in July of '07?

22 A. Mr. Riggert's?

23 Q. I'm sorry, Mr. Riggert's.

24 A. Okay. Say that again.

25 Q. Were you aware that the Cadle Company had a writ of

1 garnishment served on the Merrill Lynch account owned by
2 Mr. Riggert?

3 A. Yes.

4 Q. Okay. Did that make you fearful that the Cadle
5 Company might try to get the money in your account?

6 A. I was not focused on the Cadle Company. I was
7 focused on paying Emily Riggert's tuition bill, Hannah
8 Riggert's tuition, and our living expenses. That was my
9 total focus.

10 Q. Thank you.

11 A. You're welcome.

12 MR. LAUN: No more questions, Your Honor.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MS. BARTHLOW:

16 Q. Ms. Riggert, one last question.

17 Mr. Laun just asked you if you had any debt owed to the
18 Cadle Company.

19 Are you aware of any debt --

20 A. None whatsoever. I didn't hear him say that. I'm
21 sorry if I missed that.

22 Q. Okay. And do you understand what the basis is for
23 the MBank judgment against your husband?

24 A. Yes.

25 Q. What was it?

1 A. I believe it was a real estate investment.

2 Q. Okay. Were you part of that real estate --

3 A. I was not part of that real estate investment, no.

4 It was Jim Riggert.

5 Q. Okay. Was that an investment that he made prior to
6 marriage?

7 A. No.

8 Q. Okay. But that was part of his business, that was
9 not you?

10 A. Correct.

11 Q. Thank you.

12 MS. BARTHLOW: No further questions.

13 THE COURT: All right. Any recross?

14 MR. LAUN: None, Your Honor.

15 THE COURT: Okay. Thank you, Mrs. Riggert.

16 You're excused.

17 All right. Ms. Bartholow, any other evidence today?

18 MS. BARTHLOW: I don't believe so, Your
19 Honor. I think this is -- despite our inability to agree on
20 the exact wording of the facts, I think we do agree what
21 happened happened. And what the documents say they say.

22 THE COURT: All right. Well let me go through
23 this.

24 The defense has rested, as I hear it.

25 Do you have any rebuttal?

1 MR. LAUN: We close.

2 THE COURT: Okay. I'll hear very brief
3 closing arguments.

4 MR. LAUN: Two minutes.

5 THE COURT: That would be great.

6 MR. LAUN: Your Honor, we think that we've
7 carried our burden under our 727(a) claims. And we have
8 developed and proven all of the elements.

9 The testimony is just not credible or believable of
10 Mr. Riggert as to what they put together this agreement some
11 three months -- two and a half months after the closing of
12 the house of the refinance in which they come along and say,
13 Okay. Let's set up a scheme where we can set aside some
14 money. And let's divide our homestead into separate estates.
15 They don't do that with any kind of a deed or anything. They
16 just do that with this homestead refinancing agreement, which
17 suggests that Mr. Riggert is somehow going to get some more
18 money out of the homestead than his spouse is because she did
19 the latest refinance.

20 But the whole problem that we've had with the case is
21 why couldn't this have been put on the schedules and
22 statement of affairs? I mean, in the over abundance of
23 caution, why wouldn't someone list that? And then after the
24 adversary was filed, why wouldn't you amend? Why wouldn't
25 you cut the legs off of our allegation that you didn't reveal

1 on the schedules, the sworn schedules and statement of
2 affairs? That -- that notion that I don't have to, that this
3 is something that I have set aside this money to my spouse
4 and I don't have to tell the Bankruptcy Court about it. Oh,
5 yes, this creditor knew about it. Sure we knew about it
6 after we got the copy in November and they filed in January.
7 And, sure, we questioned them about it at the 341 Meeting.
8 But then the arrogance that we don't have to supply the
9 Bankruptcy Court with accurate sworn schedules and statement
10 of affairs, there's a notion there that they don't have to
11 play by the rules.

12 What is the real purpose of this agreement? I think
13 the testimony that you heard is convoluted. For the life of
14 me I can't figure out why anybody would enter into this,
15 except that they thought that Cadle was on the trail of
16 getting -- somehow was going to execute on this \$65,000
17 before they had a chance to spend it. That's the real
18 motive. And that's the hindering and delaying of the
19 creditors.

20 The concealment is they got the money June 29th when
21 they closed. They did this home financing in September. But
22 they didn't record it until October 26th. And then they
23 didn't supply it to us until November. Granted, we should
24 have been checking the real estate records for such documents
25 routinely. But that's the part of the deception that

1 troubles the plaintiff in the case. That there is an -- and,
2 of course, by then, I think the testimony has pretty well
3 been shown that they've already spent the money by that time.
4 But I think there was a real fear on their part that Cadle
5 was about to garnish this 65,000 once they found out about
6 the 65,000, in fact, had been paid at a closing. Of course,
7 we knew about the closing, but we didn't know how much money
8 was being -- the excess. That was kept from us.

9 But this idea that this -- a person who is a real
10 estate agent can sit on the witness stand and say, I really
11 don't understand the import of the agreement and what the
12 agreement really meant and, gee, I don't know, I'll need to
13 ask a lawyer, that makes my stomach a bit upset. And I
14 believe that shows an indication that this debtor is not
15 playing with the truth and that there's been representations
16 made both in the schedules and statement of affairs that it's
17 material and that we have proven every element of our 727
18 complaint, Your Honor.

19 THE COURT: All right. Thank you.

20 Ms. Bartholow.

21 MS. BARTHLOW: Thank you, Your Honor.

22 I don't think there's any intent to not disclose this
23 transaction. I don't think that Cadle can say they weren't
24 aware of all of the transaction. They have already stated in
25 other pleadings in this case that they received the closing

1 statement. They're on the closing statement. They knew that
2 Mrs. Riggert got the money. Their own exhibit shows the wire
3 information. The Riggerts did do an agreement. Whether they
4 needed to or not, they did. They filed it of record. That's
5 the only testimony. Mr. Riggert has testified when he was
6 talking to Mr. Savet at the beginning he told them that there
7 was going to be \$60,000, about, that was going to go to
8 Mrs. Riggert.

9 I don't see an intent to deceive at all. If there was
10 an intent to deceive, they certainly wouldn't have filed
11 something in the deed records showing, Look, we're dividing
12 our equity. I think the only evidence is, is that's what
13 they thought they were doing. They were dividing equity in
14 an exempt asset.

15 There wasn't a transfer of Mr. Riggert's asset to
16 Mrs. Riggert. There wasn't a transfer to tell the Court
17 about. It was a receipt of equity out of the home which was
18 an exempt asset that creditors could never reach. Only if
19 they sold their house and sat on the proceeds for six months
20 could a creditor ever reach the home proceeds. This was
21 designed to make it clear to anyone who looked that, yes,
22 they had -- Mrs. Riggert had taken her equity out.

23 If it was a defensive move in some way dealing with
24 Cadle, I don't know. I didn't do that document. They were
25 not saying that that's what it was. But it's of record. It

1 can't be said that it was designed not to disclose.

2 I think for the contingencies that Mr. Laun has pointed
3 out -- the movants say they're not there. They're there.
4 But were they real in the sense of the debtor's concept of
5 how this would play out? And the answer is, No. They never
6 expected that there wouldn't be the equity there to pay
7 Mr. Riggert, or to allow him to take his equity. Even if he
8 took his equity, it's still exempt for six months. And
9 they've got to have a home.

10 They have shown the Court in their schedules that they
11 don't have assets. If you look at them, they are one of the
12 lowest asset collection of people that you normally see.
13 This is an extremely modest household. And perhaps in part
14 because Cadle has done their job in collecting. Because we
15 disclosed that Cadle got it, at least almost \$14,000 in the
16 year before they filed. And that's undisputed. So, you
17 know, these people couldn't build up a lot of assets.
18 Frankly, I don't know why they didn't file bankruptcy many,
19 many years ago. But they didn't. And they're here now. And
20 the question is, at what point in time does somebody finally
21 get a discharge from Cadle? Cadle is claiming that these
22 people owe them more than a million dollars. And at age 55
23 and 52 with this financial statement, there's no way these
24 people are ever going to earn a million dollars.

25 So, again, did they go through this whole thing with a

1 design to keep from the Court, to keep from the public, or to
2 keep from Cadle a transaction that would render an asset to
3 the creditors. And we say, no. It wasn't designed to do
4 that. It didn't do that. The contingencies were so remote
5 that they're not material, in our view. And there wasn't a
6 transfer of an asset that belonged to Mr. Riggert.

7 So, you know, I just don't see how Cadle can say that
8 this was designed to cheat them in any way, shape, or form or
9 the other creditors. It was discussed at the 341.

10 Now, I've read the Cadle cases. And Mr. Laun says, Why
11 didn't you amend? Part of the reason is in every case where
12 there is an amendment, Cadle comes in and says, See, they
13 lied the first time and they knew it. Now they're amending
14 and that proves that there was a false oath. You're kind of
15 damned if you do and damned if you don't. We didn't list the
16 homestead agreement, because we didn't believe it was an
17 asset available to the creditors or a transfer that needed to
18 be reported. If that was a mistake, then it's probably my
19 mistake and not my client's. And because there -- you know,
20 the debt itself is there. The fact that there was a transfer
21 to Cadle is there. There was no intent to hide anything.
22 And if, in fact, this was a re-arrangement of the equities in
23 exempt property, then there was nothing to report and that's
24 the way we viewed it.

25 THE COURT: Thank you.

1 MS. BARTHOLOW: Thank you.

2 THE COURT: All right.

3 MR. LAUN: Can I have 45 seconds just for
4 rebuttal?

5 THE COURT: 45 seconds. I have a feeling I
6 know what you're going to say. Loan proceeds exempt, not
7 exempt.

8 MR. LAUN: Yes. That was my -- we had filed a
9 trial brief about that, about the constitution and the
10 property code clearly states that sales doesn't address
11 refinancing where you pull this equity out. So it's perhaps
12 a novel issue. I haven't been able to find anything on it.

13 I did want to say one last thing. And it's kind of a
14 red flag whenever the debtor characterizes themselves as
15 modest. They live in a \$662,000 house. It just is troubling
16 to me that that now has become a modest debtor. We move for
17 judgment.

18 THE COURT: All right.

19 MS. BARTHOLOW: Your Honor, may I respond to
20 the issue just brought up? Not the home value, but the --
21 whether the proceeds are exempt or not.

22 THE COURT: Just very briefly.

23 MS. BARTHOLOW: I think it's an interesting
24 issue. I'm not sure that it controls this case. Because
25 even if we took the assumption, which I don't, that they're

1 not exempt, then we're definitely under sole management and
2 control of the spouse who owed nothing to Cadle. And she is
3 allowed to have her sole and only property. I think that's
4 what Trammel says. I think that's what Mayhat says. I think
5 it's a non-issue.

6 THE COURT: Okay. Thank you.

7 All right. It's 9 minutes after 12. I'm going to come
8 back at 12:30 and rule. So we're in recess for 21 minutes.

9 (Brief recess ensued.)

10 THE COURT: Okay. We're back on the record in
11 the Cadle Company v. Riggert. Adversary 08-3165. The Court
12 has been deliberating. I apologize for my inaccurate time
13 estimate. I tend to do that sometimes.

14 Before this Court is, of course, the adversary
15 complaint objecting to discharge brought by the Cadle
16 Company, as well as the debtor's answer to that complaint.
17 This Court has jurisdiction of this matter pursuant to 28 USC
18 Section 1334. And this is a core proceeding pursuant to 28
19 USC Section 157(b).

20 Cadle narrowed the issues at trial to whether
21 Mr. Riggert's discharge should be denied pursuant to either
22 or both Sections 727(a)(2)(A) and/or 727(a)(4) of the
23 Bankruptcy Code.

24 This oral bench ruling constitutes the Court's findings
25 of fact and conclusions of law pursuant to Federal Rule of

1 Bankruptcy Procedure 7052. The Court reserves the right to
2 supplement or amend these findings as it deems necessary or
3 appropriate.

4 The Court finds that the debtor filed a Chapter 7
5 Bankruptcy petition on January 31st, 2008. The debtor is a
6 licensed real estate agent in Texas. He is approximately 55
7 years old. The debtor's wife, Lisa, and he have been married
8 since 1981. The debtor's wife is not a debtor in bankruptcy.
9 Ms. Riggert is an interior designer and also has a wage
10 earning job at St. Michael's Women's Exchange.

11 The debtor's statement of financial affairs at
12 questions 1 and 2 show that Mrs. Riggert has earned her own
13 income in the years leading up to Mr. Riggert's bankruptcy
14 filing. The credible testimony was that the debtor and
15 Mrs. Riggert have maintained separate accounts for much or
16 most of their marriage. Also, the credible testimony was
17 that the debtor and his wife have nominal retirement funds,
18 as shown on the debtor's schedules. And that their primary
19 wealth is their homestead. It's specifically whatever equity
20 they have in their homestead.

21 Plaintiff, Cadle, claims to be an unsecured creditor of
22 the debtor and the owner of a judgment claim against the
23 debtor. Debtor's Schedule F shows that Cadle has stated an
24 unsecured claim of \$1,214,000 as of the bankruptcy petition
25 date. Mrs. Riggert is not obligated to Cadle.

1 The central transaction at the heart of this adversary
2 proceeding involves the debtor and his wife's homestead and
3 is as follows. The debtor and his wife own a homestead at
4 6622 Northport in Dallas, Texas, which the debtor listed on
5 his Schedule A in his bankruptcy case showing a secured claim
6 against it of \$491,000 and an estimated value of \$700,000.

7 The debtor and his wife have lived at the home since
8 1983. The debtor's \$700,000 valuation was based on what an
9 appraiser had determined the value to be in connection with
10 the refinancing of the home that occurred or closed in July
11 of 2007. With regard to this refinancing the credible
12 evidence was that in or about July 2007 Mrs. Riggert
13 refinanced the homestead with Countrywide. Mrs. Riggert
14 received \$65,864 at the closing of that refinancing
15 representing the cash from the equity in the home, or some of
16 the equity in the home. Cadle received \$5,000 cash from the
17 equity refinancing that otherwise might have gone to debtor
18 or Mrs. Riggert.

19 Exhibit 11 at trial was the closing settlement
20 statement from the home refinancing and it shows that Cadle
21 received a payoff of \$5,000 from refinancing proceeds in
22 exchange for a partial release from Cadle.

23 The credible testimony was that the purpose of the
24 Countrywide home equity loan, I keep calling it home equity
25 loan, home loan was to obtain funds to pay the debtor and his

1 wife's daughter's school tuition at Trinity University, as
2 well as the younger daughter's private high school tuition.

3 The debtor has worse credit than his wife, at least
4 partially because of Cadle, and so Mrs. Riggert qualified for
5 a loan easier. The debtor and Mrs. Riggert had other family
6 bills and no way to pay them. The loan proceeds were used
7 for living expenses and none of the loan proceeds remain in
8 Mr. Riggert's account.

9 Related to this whole home refinancing transaction on
10 or about September 4th, 2007 the debtor and Mrs. Riggert
11 signed a document entitled, Homestead refinancing agreement.
12 This was Trial Exhibit 1. The agreement recited that it was
13 executed on September 4th, 2007, but to be effective on June
14 29th, 2007.

15 The unrefuted testimony was that the purpose was to
16 clarify in writing what the couple's agreement was and put it
17 in the deed records, specifically that Mrs. Riggert was
18 getting the equity proceeds as her sole and separate
19 property. The unrefuted testimony was that the agreement,
20 again, was filed in the deed records and that it was produced
21 to Cadle before Mr. Riggert's bankruptcy filing.

22 The agreement purported to segregate to Mrs. Riggert as
23 her sole and separate property the sum of \$65,864.49
24 representing cash from the refinancing of the home, except
25 for the 5,000 in cash that went to plaintiff. The agreement

1 further provided that the debtor would be paid the amount of
2 \$65,864 upon the sale or refinancing of the home after
3 repayment of certain listed items. But in the event the
4 gross sale proceeds from a future home sale were not
5 sufficient to pay debtor \$65,864, the agreement required
6 Mrs. Riggert to pay debtor \$65,864 from her sole and separate
7 property in 120 equal payments with 6 percent interest per
8 annum.

9 The debtor did not list the existence of this agreement
10 with his wife in his sworn schedules and statement of
11 financial affairs. And those schedules and statement of
12 financial affairs have not been amended since their filing.

13 Mr. Riggert testified that he did not consider the
14 \$65,864 amount referred to in paragraphs 3 and 4 of the
15 agreement with his wife as an account receivable. It was
16 contingent, could be owed one day. But he did not think he
17 needed to list it in Schedule B because there was no
18 promissory note or no current obligation to pay. The intent
19 was to identify the couple's separate property. A lawyer
20 drafted it for him and he did not really know if it
21 constituted an enforceable obligation. He views it as
22 follows. My equity is still in the home, but my wife got her
23 equity out already.

24 The debtor reiterates that he never saw the money,
25 i.e., the \$65,864 that was obtained from the refinancing in

1 July '07 that went to the wife as her separate property. And
2 the evidence corroborated that this \$65,000 went to
3 Mrs. Riggert's JP Morgan account over which the debtor had no
4 signing authority.

5 The further evidence was that a large portion of the
6 money went to pay Trinity and that the remainder was put in
7 Mrs. Riggert's Merrill Lynch separate account.

8 The evidence further was that Cadle had garnished the
9 debtor's own Merrill Lynch bank account in August 2007.

10 Now, Cadle objects to the debtor's discharge because of
11 this \$65,000 transaction not being disclosed in his
12 schedules, not being in Schedule B, not being in the
13 statement of financial affairs at question 3, or 10, et
14 cetera. To be clear the potential errors identified in the
15 debtor's schedules and statement of financial affairs at
16 trial were; one, the failure to list the agreement with Mrs.
17 Riggert in Schedule B, or a contingent accounts receivable
18 from
19 Mrs. Riggert in Schedule B; two, the failure to list a
20 payment to the wife, or a transfer to the wife in questions 3
21 and 10 of the statement of financial affairs, and
22 additionally, a failure to list Mrs. Riggert as the debtor's
23 spouse in question 16 of the statement of financial affairs.
24 Cadle also objects to discharge arguing that there was
25 within one year before the bankruptcy filing a transfer or

1 concealment of property of the debtor with intent to hinder
2 or deceive Cadle.

3 The potential evidence of concealment at trial was
4 Exhibit 12, personal financial statements supplied by debtor
5 to Cadle in August 2007. Cadle complains that it did not
6 know of the agreement with the wife in connection with the
7 refinancing. Also evidence of concealment, the fact that the
8 agreement Between Mr. and Mrs. Riggert was not executed until
9 September 2007, and not supplied to Cadle until November
10 2007. Also Cadle argues the overall nature of what happened
11 was an effort to thwart Cadle's collection efforts.

12 The debtor's primary defense is that essentially the
13 total intent here was to get the debtor and his wife's bills
14 paid, not an intent to thwart Cadle. The debtor also
15 credibly testified that if the couple ever sells their house,
16 they would intend to buy another house and roll his equity
17 into a new house. The debtor did not view his wife as really
18 having an indebtedness as to him that would have to be paid
19 one day. He never envisioned the scenario where Mrs. Riggert
20 would owe him money because of the value of the house.

21 The testimony, finally, was that the debtor and his
22 wife had separate incomes for a long time and have long
23 operated as though they have his and her separate property.

24 Based on all of the totality of evidence here, the
25 Court concludes that the debtor is entitled to his discharge.

1 The homestead refinancing agreement was not entered into for
2 the purpose of defrauding creditors and the debtor did not
3 conceal the transaction. The omissions from the debtor's
4 schedules were not material.

5 In order to establish that a debtor's discharge should
6 be denied pursuant to Section 727(a)(2)(A) the moving
7 creditor must show; one, a transfer or concealment of
8 property; two, belonging to the debtor; three, within one
9 year of the filing of the bankruptcy petition; and, four,
10 with intent to hinder, delay, or defraud a creditor. The
11 intent to defraud must be actual, not constructive. But
12 actual intent may be inferred from the actions of the debtor
13 and may be proven by circumstantial evidence.

14 Here the Court does not find an intent that is required
15 to deny the discharge under 727(a)(2)(A).

16 Now, in order to make a showing under 727(a)(4), the
17 plaintiff must show; one, that the debtor made a statement
18 under oath; two, that the statement was false; three, that
19 the debtor knew the statement was false; four, that the
20 debtor made the statement with fraudulent intent, and; five,
21 the statement related materially to the bankruptcy case.

22 Again, the Court does not believe materially false
23 statements were made here, nor was there required intent on
24 the part of the debtor. The Court, also, does not believe
25 there was any reckless disregard for the truth.

1 The Court relies on, among other cases, the in re Pratt
2 case, 411 F.3d 561, 5th Circuit 2005, as well as many other
3 cases that the Court will not bother to cite here.

4 So the debtor's discharge shall be granted. The
5 objections of Cadle are overruled.

6 And, Ms. Bartholow, I'm going to look to you to upload
7 a form of judgment consistent with this Court's oral ruling.
8 The Court is not going to insist you draft lengthy findings
9 and conclusions. I'd ask that you simply cross-reference the
10 Court's oral findings, or perhaps attach a transcript. But
11 if you want to take a stab at doing detailed findings and
12 conclusions, the Court will certainly consider signing off on
13 that type of thing.

14 Now the Court understands that counsel have agreed to
15 bifurcate the issue of attorney's fees. I'm just going to
16 say right off the bat that I'm not aware of any authority
17 that allows the debtor to get attorney's fees reimbursed,
18 unless a Rule 11 motion was properly made. But I will
19 certainly look at any authority you want to submit to me in
20 that regard, Ms. Bartholow.

21 All right. Well, I thank you all for your very
22 organized and concise presentations here today. I thank you
23 all for doing the joint pre-trial order. We don't always
24 have that cooperation and the Court appreciates it when it
25 happens.

1 Are there any housekeeping matters?

2 MR. LAUN: No, Your Honor.

3 MS. BARTHOLOW: No, Your Honor.

4 THE COURT: Okay. Thank you. We stand in
5 recess.

6 (End of Court's Ruling.)

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1 C E R T I F I C A T E

2 I, CINDY SUMNER, do hereby certify that the
3 foregoing constitutes a full, true and complete transcription
4 of the proceedings as heretofore set forth in the
5 above-captioned and numbered cause in typewriting before me.

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13

14 /s/Cindy Sumner

15 CINDY SUMNER, CSR #5832
16 Expires 12-31-09
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